

M5VVSHE1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

20 Cr. 412 (AT)

5 TIMOTHY SHEA,

6 Defendant.

Trial

7 -----x
8 May 31, 2022
9 9:00 a.m.

10 Before:

11 HON. ANALISA TORRES,

12 District Judge
13 and a Jury

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: ALISON G. MOE

NICOLAS T. ROOS

18 ROBERT B. SOBELMAN

Assistant United States Attorneys

19 MERINGOLO & ASSOCIATES P.C.

20 Attorneys for Defendant

21 BY: JOHN C. MERINGOLO

ANGELICA B. CAPPELLINO

22 CLARA S. KALHOUS

23 Also Present: Sunny Drescher, Paralegal Specialist, USAO
24
25

M5VVSHE1

(Trial resumed; jury not present)

THE COURT: Please make your appearances.

MR. ROOS: Good morning.

Nick Roos, Robert Sobelman, Alison Moe for the United States.

MR. MERINGOLO: Good morning, your Honor.

John Meringolo, Anjelica Cappellino, and Clara Kalhous for Timothy Shea, who's on my right, present.

THE COURT: Please be seated.

We're missing two jurors.

So I wanted to address the jury charge.

The government had asked for an advice of counsel defense, which I have added; as well as an instruction with respect to seizure of funds, which I have added; as well as an instruction with respect to equally available evidence, which I have added.

The defense asked for an idle chatter statements of co-conspirators charge, which I found confusing and not helpful and which I have not added. But there is a section that discusses some of these issues. It's titled "Liability for Acts and Declarations of Co-conspirators." It's on page 22.

Is there anything further?

MR. SOBELMAN: Not from the government, your Honor.

MR. MERINGOLO: Not from the defense, Judge.

THE COURT: The government made a motion with respect

M5VVSHE1

1 to niceness, and I'll hear you on that.

2 MR. SOBELMAN: Yes, your Honor.

3 Defense in opening said that the jury would find at
4 the end of the case that the government had not been nice to
5 Tim Shea. We think that's an improper comment to the jury;
6 that's not an issue before the jury. It speaks to the
7 government's motivations and treatment of the defendant.

8 It appears, based on our review of other jury
9 addresses he's made in several other cases, this is a theme
10 that he improperly often pushes on the jury. And we would like
11 the Court to advise the defense that they are not to engage in
12 any impermissible sort of argument casting shade on the
13 government for charging the defendant, arresting the defendant,
14 or prosecuting the case. The arguments should be focused on
15 the sufficiency of the evidence or lack thereof.

16 THE COURT: Mr. Meringolo.

17 MR. MERINGOLO: I have nothing to add, Judge.

18 THE COURT: So I'd like your --

19 MR. MERINGOLO: I think it's improper to rule for the
20 government. I think that they took everything out of context.
21 I said that they would find that they didn't prove their case
22 beyond a reasonable doubt, therefore, they would vote not
23 guilty. And they may say when they are going home after that
24 that it wasn't nice what happened to Tim Shea, not what the
25 government did, what happened.

M5VVSHE1

1 But, Judge, we could make a emotional arguments,
2 that's -- I believe that's *Old Chief* and then -- whatever,
3 Judge. Whatever you decide, we have something special for
4 them.

5 THE COURT: What happened to Mr. Shea is that he was
6 indicted and that there's been a jury trial. That's what's
7 happened. And so niceness has nothing to do with that. And so
8 I don't want to hear from either side any form of disparagement
9 as to the tactics that were employed.

10 MR. MERINGOLO: Tactics from the government. I can't
11 say it's not nice what the government did, right?

12 THE COURT: Correct.

13 MR. MERINGOLO: Is that the ruling?

14 THE COURT: Yes.

15 MR. MERINGOLO: Okay, Judge. I'm sorry. We've been
16 doing this -- apparently this is how I get all my acquittals, I
17 just say it's not nice, not the thousand cross-examinations
18 over the years, but just all the acquittals is it's not nice.

19 And I say that because my grandmother died before one
20 of the trials. And she used to tell me, It's not nice, John.
21 It's not nice. Don't worry, somebody up there gave me
22 something even better than that, which we're getting ready to
23 use, and I think it's going to be 100 times more effective,
24 maybe a million times.

25 THE COURT: So long as it doesn't involve

M5VVSHE1

1 disparagement.

2 MR. MERINGOLO: No disparagement, Judge.

3 MR. ROOS: Your Honor, one more thing. Very minor.

4 THE COURT: Yes.

5 MR. ROOS: The government would move to seal the bank
6 record exhibits, which are 1000 through 2300. They contain --
7 it looks like they contain the actual checks written by all the
8 donors who wrote checks, and so they've got like the donors'
9 names, the donors' bank account number, and their address. And
10 so for the reasons previously -- I'm sorry, 1000 through 2400.
11 For the reasons previously that the Court sealed the donation
12 records, we ask that those bank records be sealed.

13 THE COURT: No objection?

14 MR. MERINGOLO: No objection.

15 THE COURT: Okay. So they are sealed.

16 Please have the jurors brought in.

17 MR. MERINGOLO: In between the government's summation
18 and my summation, can we have five minutes?

19 THE COURT: Yes.

20 MR. MERINGOLO: I apologize to the court reporter.

21 MR. SOBELMAN: Your Honor, if defense counsel is given
22 that courtesy, would it be possible for our side to be given
23 the same courtesy for rebuttal?

24 THE COURT: That's fine.

25 MR. SOBELMAN: Thank you, your Honor.

M5VVSHE1

1 (Jury present)

2 THE COURT: The parties agree all jurors are present
3 and properly seated?

4 MR. MERINGOLO: Yes, Judge.

5 MR. ROOS: Yes, your Honor.

6 THE COURT: Please be seated.

7 Good morning. Welcome back.

8 Members of the jury, both sides have rested and have
9 finished presenting evidence. We've now reached that point of
10 the trial where you're about to hear summations of counsel.
11 Following summations, I will instruct you as to the laws,
12 rules, and principles of law that will guide you during your
13 deliberations and rendering your verdict.

14 The government will make its summation first and the
15 defense will follow. In making their summations, both sides
16 will review the evidence that you've heard and seen during the
17 course of the trial, and will suggest to you certain inferences
18 or conclusions which they in their opinion believe may be
19 properly drawn from the evidence in the case. If you find that
20 a particular attorney's analysis of the evidence is correct and
21 accurate, then you are at liberty to adopt such inferences and
22 conclusions in whole or in part.

23 On the other hand, if you find that a particular
24 attorney's analysis of the evidence is not correct and not
25 accurate, then you are at liberty to disregard such inferences

M5VVSHE1

Summation - Mr. Roos

1 and conclusions in whole or in part. Either way, you're free
2 to draw your own conclusions based on your analysis of the
3 evidence presented.

4 Nothing said by either attorney in their summations is
5 evidence in this case; it is argument. Nothing that I will say
6 in my final instructions will be evidence either.

7 You've heard all the evidence in this case. You, and
8 you alone, are the sole and exclusive judges of the facts in
9 this case.

10 Now we will hear the summation of the government.

11 MR. ROOS: Thank you, your Honor.

12 May I proceed?

13 THE COURT: You may.

14 MR. ROOS: Good morning.

15 Timothy Shea, the defendant, schemed with his business
16 partner, his partner in crime, to lie to thousands of donors to
17 We Build the Wall. Schoolteachers, retired folks, New Yorkers,
18 they were promised that 100 percent of the donations they were
19 giving would go to building a wall, and not a penny would go to
20 salary or pay to Brian Kolfage, the organization's president.
21 That wasn't true. It was false. It was fraudulent.

22 The defendant made a secret agreement with Kolfage,
23 take the money from We Build the Wall and pay kickbacks. And
24 to cover it up, he created fake documents, and he obstructed
25 justice. That is what the evidence showed last week during

M5VVSHE1

Summation - Mr. Roos

1 trial.

2 So this is the government's summation. I'm going to
3 summarize the evidence you heard last week and talk about why
4 the defendant is guilty. There are three charges in this case,
5 and those charges are also called counts. These are the
6 charges: Count One, conspiracy to commit wire fraud; Count
7 Two, conspiracy to commit money laundering; Count Three,
8 falsification of documents.

9 We're going to talk about all these in some depth, so
10 you don't need to memorize them now or commit them to memory.
11 We'll talk through them. We're going to start with the first
12 count, conspiracy to commit wire fraud.

13 The defendant is charged with conspiracy to commit
14 wire fraud in two ways, two types of wire fraud. Each way or
15 type is called an object or objective of the conspiracy. So
16 this on your screen is the first object of Count One, the first
17 way that the defendant conspired to commit wire fraud. This is
18 about a fraud on the donors to We Build the Wall. So I'll read
19 it. He conspired to commit wire fraud by agreeing to
20 participate in a scheme to defraud to obtain money by making
21 materially false or fraudulent statements or promises to
22 donors.

23 So the scheme was to tell them that all their money
24 was going to the wall, none was going to go to Brian Kolfage or
25 any of the other insiders and, instead, the scheme involved

M5VVSHE1

Summation - Mr. Roos

1 taking some of the money that they raised, and that they raised
2 those false promises and taking it for themselves. So we're
3 going to talk about the evidence of Count One.

4 This is the second object. So I said there are two
5 parts. The second way the defendant conspired to do wire
6 fraud, it's very similar to the first way he committed the
7 crime. This is about the fraud on We Build the Wall, the
8 organization. So I'll read it. It's a conspiracy to commit
9 honest services wire fraud by agreeing to participate in a
10 scheme to defraud We Build the Wall of its right to Brian
11 Kolfage's honest services through kickbacks. So, folks, the
12 focus here is how the defendant committed a fraud against the
13 organization.

14 All right. So those are the two parts, the two
15 different ways the defendant is charged with violating the law
16 of conspiring to commit wire fraud. And the evidence shows
17 that the defendant did that, that he conspired to commit wire
18 fraud against the donors of We Build the Wall, against We Build
19 the Wall for several reasons. So I'm going to talk to you
20 about those reasons now, what the evidence shows.

21 There are eight reasons I'm going to go through, okay.
22 So we'll just number them and we'll go through them.

23 Reason number one is the defendant was in it for the
24 money. The evidence at the trial showed that the reason the
25 defendant and Kolfage created a GoFundMe and We Build the Wall

M5VVSHE1

Summation - Mr. Roos

1 was to make money for themselves. The defendant thought it was
2 crazy that people were donating their money to the wall, but he
3 got involved because he saw this as a way to make money, to
4 line his pockets. That's the first reason you know he's
5 guilty. So let's walk through the evidence. This is from the
6 start of the scheme, and it shows how the defendant was in it
7 for the money.

8 So first you learn that the scheme started in 2018.
9 Tim Shea, his wife, Brian Kolfage, were in business together.
10 They were partners. They worked on this news site called
11 Freedom Daily. They published news on Facebook and made money
12 off of selling ads. Danielle Deperi, who testified up there
13 last week, she said she wrote articles for them, and the Sheas
14 and Kolfage split the money. But then something happened. In
15 late 2018, Facebook shut down the defendant's news site. So he
16 needed to do something else.

17 Here's what Danielle Deperi said at page 103 of the
18 transcript about this. And by the way folks, the transcript --
19 the testimony throughout the trial will be available to you.
20 So I'm going to tell you sometimes a transcript cite or I'm
21 going to read it off the screen, it's on the bottom in the
22 right corner. If you want to see any of this testimony, you
23 can just write down the cite. Same goes for the exhibit
24 numbers, just write it down, you'll have that available to you.

25 So here's what she says: After Facebook cracked down

M5VVSHE1

Summation - Mr. Roos

1 on a lot of the news being pushed out, fake news, so to speak,
2 coming out of there, ads were lost, a lot of revenue.

3 So basically, just to put it together, it's the second
4 half of 2018, and suddenly the source of income for the
5 defendant and Kolfage is drying up, okay?

6 And you know the defendant was looking for money at
7 the time because he said it. These are his text messages:
8 Quote, Can you send 10K, that will cover my Amex and my house
9 payment. That's Government Exhibit 24. That's him to Kolfage.

10 Here's another one, this is the defendant to Kolfage:
11 Send us money or we will be really tight. That's Government
12 Exhibit 21.

13 So this is the beginning of the criminal scheme then,
14 right here in black and white. They are looking for money.
15 And here we have Government Exhibit 1. Kolfage says: Let's
16 create a GoFundMe to pay for the Trump wall. Bam.

17 And from that first day, the defendant and Kolfage
18 already have an angle, and the angle is to take a cut of the
19 money for themselves. They say, Let's create a GoFundMe to pay
20 for the Trump wall. And if Trump doesn't take the money, then
21 we'll donate it to our organization. So they are already
22 thinking about this way where they can bring money into a
23 company or an entity they've set up.

24 And the defendant says, That's so perfect. He loves
25 this idea. It's the next money-making scheme for them.

M5VVSHE1

Summation - Mr. Roos

1 And from day one, the defendant knows they are not
2 going to be able to donate this money to President Trump.
3 These are his words right here in Government Exhibit 1: Trump
4 can't take the money, but we can transfer it.

5 So they didn't go down to Washington with a check,
6 remember that? They didn't go down to Washington with a check.
7 They knew from the start that they weren't going to give the
8 money directly to the government. They are not worried about
9 giving the money to the government because they have other
10 ideas. We the People fund the wall, create a website, as we
11 know this whole thing is a way of making money, a way to
12 generate money after their Facebook business dried up.

13 Here's the defendant's wife to the defendant and
14 Kolfrage: They thought it would be a gold mine for sure.
15 That's Government Exhibit 2. And they were thrilled with how
16 many donors believed their lie, that they were going to hand
17 all this money over to the government.

18 This is Government Exhibit 4. The defendant couldn't
19 believe people would be throwing money at something like this.
20 That's what he says. He couldn't believe people would throw
21 money at something like this.

22 So let's pause for a second.

23 This is the defendant making fun of people who are
24 donating, people like Bill Ward who flew here from Arizona. He
25 truly believed in the cause; he believed in the goal of

M5VVSHE1

Summation - Mr. Roos

1 spending his hard-earned money because it was going to a cause
2 he believed in. He didn't donate it to line people's pockets.

3 So why is the defendant making fun of people who are
4 donating to this GoFundMe that he set up? Because he and his
5 co-conspirators knew all along that they were going to take a
6 cut. So the defendant is sort of treating donors like mopes
7 because that's exactly how he viewed them.

8 All right. But then you know from listening to the
9 evidence that something changed, right, GoFundMe puts a pause
10 on this money venture. They say what the defendant knew all
11 along: Hey, you can't give money directly to the government.
12 Dan Gordon, who is the first witness who testified, he told you
13 about that. GoFundMe told Kolfage what they already knew, that
14 they couldn't donate money to the government, and that GoFundMe
15 was going to return all that money back to the donors.

16 So plan B time. They go to their plan B. And that's
17 setting up some sort of organization that can get the money.
18 And this is Government Exhibit 14. Kolfage announces this new
19 plan to Tim Shea in text message. He says: We are building
20 the wall. We. We are bypassing the government, because
21 there's no way they are going to let all this money just sort
22 of slip through their fingers now that it's been donated
23 through GoFundMe.

24 People were suspicious though. You saw the evidence
25 of that. They had all sorts of questions about this new plan.

M5VVSHE1

Summation - Mr. Roos

1 Here's a potential donor who emailed Kolfage, Government
2 Exhibit 105. What is this new organization? Where will this
3 money go? Who will manage it? Are these assurances that it
4 will go to -- are there assurances that it will go to help fund
5 the wall?

6 There's another example. The donor writes: Before I
7 make a decision, I'd like to know if you or anyone on the
8 committee will be paid or are you all just volunteering your
9 time. So that's Government Exhibit 104.

10 Are the individuals serving on the advisory board and
11 the construction, finance, or the audit committees, operations,
12 administration, PR, media, and ongoing fundraising receiving
13 compensation from donated funds? That's Government Exhibit
14 106.

15 And they are getting lots of questions like this.

16 And then the articles came out about Kolfage and We
17 Build the Wall that said the whole thing was a scam. The
18 articles came out the day before We Build the Wall's big
19 announcement about getting people to opt in. So this was a
20 pretty big turning point, a pretty bad timing for them to get
21 this type of negative press.

22 So an article ran in BuzzFeed, and it's on the screen.
23 And it said: Kolfage pushed the limits of misleading content
24 in pursuit of online traffic and profits. And the article also
25 claimed that Kolfage had spearheaded other crowdfunding

M5VVSHE1

Summation - Mr. Roos

1 ventures in the past, other campaigns on GoFundMe with the
2 promise of helping people like veterans at military hospitals.
3 But the article claimed that actually there was no record of
4 Kolfage ever donating the money. So people were seeing this
5 article and they are feeling suddenly very suspicious, as
6 Kolfage and his partner in crime are just going to pocket the
7 money.

8 So We Build the Wall and Kolfage are taking a beating
9 in the press. They are just getting hammered by these
10 accusations about having misleading information, about
11 pocketing money. So they have another plan.

12 That brings us to the second reason the defendant
13 conspired to commit wire fraud: The lies to donors.

14 After the donors were suspicious and they were asking
15 questions and the press was accusing them of, you know,
16 misleading information and pocketing money, they come up with a
17 new idea. And the idea is lie to everyone and tell them that
18 all of the money will go to the wall and not a penny will go to
19 Brian Kolfage. And they blast this lie out everywhere.

20 This is what they posted on the GoFundMe in response
21 to the accusations of fraud. There are several screenshots of
22 this GoFundMe page, and they all just promise: 100 percent of
23 your donations will go to the Trump wall. 100 percent of the
24 funds raised on GoFundMe will be used in the execution of our
25 mission and purpose. Brian Kolfage, quote, will personally not

M5VVSHE1

Summation - Mr. Roos

1 take a penny of the compensation from these donations.

2 And remember, that's the GoFundMe that the defendant,
3 his wife, and Kolfage launched in December 2018. The defendant
4 we saw had login credentials, that's Government Exhibit 9.

5 So they are running this thing. And they made a
6 website for We Build the Wall, and made the same false promises
7 there. Government Exhibit 406. This is what he says. The
8 website says: How much is Brian Kolfage getting paid? In
9 accordance with Mr. Kolfage's personal pledge and the bylaws of
10 We Build the Wall, Inc., Mr. Kolfage will not profit even a
11 single penny from We Build the Wall. So not even a single
12 penny from We Build the Wall should be going to Brian Kolfage.

13 The defendant, he worked on We Build the Wall's
14 website. He helped write the fraudulent language. Here's an
15 example, Government Exhibit 23. The defendant, he's
16 checking -- he's checking with his business partners and he's
17 saying, What do you think about this language? He's asking the
18 language to put on the website because they are all in on the
19 lie. And he wants to be sure he can get away with it.

20 So he asks Brian Kolfage and his wife whether this
21 language on the screenshot at the top of the website should
22 have the statement, All proceeds go directly to building the
23 wall. And Brian Kolfage says as they are editing this website,
24 I think since it can't be proven, it's okay. Because no one
25 can ever prove -- he's saying no one can ever prove people are

M5VVSHE1

Summation - Mr. Roos

1 taking it, so it's fine.

2 Tim Shea says, Okay. Cool, cool. I just don't want
3 to go to jail. And he and his wife are joking about going to
4 jail. And the reason they are worried about going to jail is
5 because the statements they are making about what they are
6 doing with the donors' money are false. They are lies. And
7 that's how you know it's a fraud, because they are talking
8 about how their statements on the website could end them up in
9 jail.

10 And so the defendant and his wife and Kolfage also
11 posted on social media; we saw a bunch of evidence about this.
12 They said Kolfage wasn't being paid; all the money goes to the
13 wall. Talking about the Facebook pages that the defendant, his
14 wife, and Kolfage talked very hard about pushing.

15 So here's an example, Government Exhibit 2. Kolfage
16 says: So we just hit it hard on Facebook. And Government
17 Exhibit 4 says: Let's just do a lot of posts today.

18 So they are all agreeing to flood social media posts
19 about We Build the Wall. And what do the posts look like?
20 These are the types of things that are posted on Facebook, on
21 the account that Kolfage says they should push.

22 It's Government Exhibit 953, and there's a lot of
23 these. Brian has stated he takes zero salary, zero
24 compensation, and it's in the bylaws. Government Exhibit 957,
25 Brian is not taking any salary or compensation. Government

M5VVSHE1

Summation - Mr. Roos

1 Exhibit 958, all the money goes to the wall.

2 So look, the defendant and his wife and Kolfage posted
3 the same lies, literally sometimes verbatim words over and over
4 again. They wrote it on the website, they wrote it on the
5 GoFundMe, they wrote it on social media. And you've seen that
6 a lot. I'm not going to go through all the tweets and
7 everything, all the emails we've looked at.

8 But let me just remind you of Government Exhibit 905
9 which is in evidence. Here it is. It's the chart of the
10 dozens of times in the month of January alone the defendant and
11 his co-conspirators promised to donors those two things: 100
12 percent of the money would go to the wall, not a penny to go to
13 Kolfage's pay. That exhibit is available to you if you want to
14 look at all the times in January alone where these statements
15 were made.

16 Why the defendant and his co-conspirators promised
17 over and over and over and over and over again that he wasn't
18 taking a penny? You already know the reason they went
19 absolutely wild posting these things, tweeting them and
20 announcing them everywhere, emailing people, because it really
21 mattered to the donors. They had to win the donors' trust.
22 And that's how you get the money. You have to get them to opt
23 in, so they had to win their trust.

24 And how do you know that the lies were material to
25 donors? Here's Government Exhibit 103. This is an email from

M5VVSHE1

Summation - Mr. Roos

1 Andy Badolato to a bunch of folks. And remember, Badolato
2 worked for We Build the Wall. He was basically like a money
3 guy. He worked for the wall, and he worked for Steve Bannon.
4 And he says the reason they are telling all the donors that
5 Kolfage personally will not take a penny is because it's a
6 material item. That means it's something that matters; it
7 matters to donors.

8 They knew it mattered to donors for the reasons up on
9 the screen. They knew it mattered to donors that they say
10 Kolfage isn't taking a penny because it would be the most
11 talked about media narrative ever. That's a text. It would --
12 here's what he says. Badolato says: It would remove all
13 self-interest taint, meaning it would eliminate the claims that
14 they were doing this to profit. It would give Brian Kolfage
15 sort of a sainthood status in the mind of donors. It would
16 repute the haters, the haters like the people at BuzzFeed or
17 the donors asking questions.

18 So the defendant and his partners were right. They
19 were right about this. They were right that these statements
20 were really important to donors in terms of building trust and
21 getting them to donate money. And it mattered to people that
22 you heard testify at trial last week. It mattered to Nicole
23 Keller. Border protection, that was personal to her. Her
24 husband, as you heard, the retired border agent, was sick. She
25 knew it meant something to him. She donated money to We Build

M5VVSHE1

Summation - Mr. Roos

1 the Wall. She felt confident doing it because she thought all
2 the money was going to go to the wall.

3 Here is her testimony, transcript at 133. She said
4 she especially remembered the 100 percent statement. It,
5 quote, made an impression on her that she could donate in good
6 faith.

7 It also mattered to Bill Ward. He's the retired
8 military veteran living in Arizona who testified last week. He
9 also remembered that promise and it was important to him.
10 Here's his testimony, transcript at 296. He said it spoke to
11 the sincerity of the operation; that they were really going to
12 take the funds and use the funds as initially advertised, to
13 build the wall.

14 So this promise, this false promise, was really
15 important to raising money. It stuck with donors and that's
16 why the donors, the victims of the fraud, remembered it years
17 later; that's why they asked for refunds when, as we're about
18 to talk about, they realized they were lied to.

19 Here's the deal: It's crystal clear that the donors
20 were being lied to. We've now talked about the promise that
21 was made over and over and over and over again to donors, that
22 not a single penny would go to Kolfage. But you know the
23 truth, because behind the scenes, they were talking about
24 Kolfage getting a cut of the money, and were actually paying
25 him a cut of the money and we've seen that in the evidence.

M5VVSHE1

Summation - Mr. Roos

1 So here it is. This is the text message that lays out
2 the scheme that the defendant was a part of. It's Government
3 Exhibit 26. It's a text between Kolfage and Badolato. The
4 text message reads: We need to figure out my pay. This is
5 Kolfage writing this. We need to figure out my pay. Mine was
6 100K up front, then 20 a month. This means that Kolfage was
7 going to get paid initially 100K up front, and then \$20,000 a
8 month in salary; \$20,000 a month as sort of a kickback that
9 we're going to talk about.

10 And here's where Bannon and Badolato, the money guy,
11 confirmed the arrangement again. It's Government Exhibit 109.
12 Bannon confirms that they want \$100,000 for Brian Kolfage.
13 Badolato writes the arrangement is \$100,000 up front, and then
14 \$20,000 monthly as the kickback. The bank records show that
15 they did exactly what the text messages and the emails said
16 they were going to do.

17 This is Government Exhibit 902. I'm going to
18 reference it a bunch. We're going to go through this in more
19 detail later, but here's the key takeaway, okay? They secretly
20 paid Kolfage \$100,000 up front, just as they had all agreed.
21 After Kolfage gets that first \$100,000 payment, which is
22 transaction one up on that slide, he starts getting \$20,000
23 monthly. That's all the other transactions, \$20,000 or more a
24 month. And notice how the money didn't go directly to Kolfage
25 on this. There's always a little middleman, a little -- what

M5VVSHE1

Summation - Mr. Roos

1 somebody called an intermediary. And that's because they'd
2 easily get caught if they paid Kolfage. Too easy for everyone
3 to detect if literally the organization is shelling out money
4 to Brian Kolfage. So they disguise the pay through all these
5 transactions where they are sending to a middleman, to an
6 intermediary, like the defendant.

7 Okay. So I want to put it together. Reason number
8 two. The defendant and his partners in crime told donors that
9 100 percent of their money would go to building a wall; not a
10 penny would go to Kolfage. The evidence shows the defendant
11 literally wrote those promises, and those promises were totally
12 false. Everyone knew the promises mattered; they were
13 material, it was really important to these donors. But still
14 behind the scenes everyone agreed that Kolfage, he was getting
15 secretly paid 100 grand up front, 20 grand a month. And the
16 fact that the defendant lied to these donors about something so
17 significant is a reason he's guilty of Count One.

18 All right. Third reason. The defendant's text
19 messages setting up the kickback scheme or the third reason you
20 know he's guilty. Text messages.

21 Let me just say this for starters: The defendant did
22 not want you to see these text messages. He very much knew his
23 words alone would convict him. That's why as Andy Crain, the
24 tech guy who testified last at the trial, told you, his
25 messages were set to auto delete after 30 days. And that's why

M5VVSHE1

Summation - Mr. Roos

1 he wanted to switch over to those two encrypted messaging
2 applications, Signal and Wickr, when he learned of a federal
3 investigation. That's why none of the text messages in this
4 case came off of Tim Shea's phone. He made sure when federal
5 investigators came for it, all those messages were gone. So
6 it's another way he tried to hide his crimes and obstruct
7 justice. But thanks to court-issued search warrants, we have
8 the text messages from the people that he was texting with,
9 from their phones, and they're enough to convict Tim Shea of
10 wire fraud conspiracy alone.

11 Let's start with Government Exhibit 29. This is a key
12 exhibit. Tim Shea is setting up the scheme in Government
13 Exhibit 29. This is one to look at.

14 He texts Brian Kolfage. His wife, who's working for
15 We Build the Wall, is on this text chain. The two other people
16 on the text chain are the two money guys, Badolato and
17 Fleurette, who work for Bannon. And here's what he says: We
18 need a solid f'ing plan, otherwise we go to prison. This is
19 what it means. Tim Shea is telling his co-conspirators they
20 need a plan to build some wall and secretly pay themselves
21 kickbacks and not get caught, because otherwise they are going
22 to prison.

23 After he says, We need a solid f'ing plan, otherwise
24 we go to prison, and they all chuckle, here's what's next: Tim
25 Shea writes: We have to firm this shit up. And Brian Kolfage,

M5VVSHE1

Summation - Mr. Roos

1 his co-conspirator, he agrees. He says: Everyone will want to
2 know. Everyone is going to want to know.

3 Brian Kolfage adds: If it came out we hired
4 ourselves, it will be bad.

5 The defendant is saying, We need to firm this up. We
6 need to firm up our plans. And Kolfage is saying, I totally
7 agree. If it came out we were paying ourselves, if it came out
8 that We Build the Wall hired you and me, it will be really bad.
9 So this is about them not getting caught stealing.

10 I've highlighted the next three text messages on
11 there. This is right afterwards. And this is how Tim Shea
12 responds to Kolfage's comment, that it would be bad if it came
13 out that they hired themselves. He says: We need to create
14 companies that I hired you. I'm paying you for a service.
15 Consulting.

16 So the defendant is saying, The way we don't get
17 caught is hiring ourselves by creating a company and having We
18 Build the Wall pay the company for a pretend service like
19 consulting. But that's just half the transaction; that's just
20 how you explain the payments from We Build the Wall to the fake
21 company.

22 How about the payments from the defendant or his fake
23 company to Kolfage? Here's what Tim Shea says, same exhibit:
24 But the transfers between me and you, we need to talk through
25 this. If 600K comes in and I transfer 300K to you, we'll have

M5VVSHE1

Summation - Mr. Roos

1 to account for that. So the defendant knows they need to come
2 up with a cover story, fake explanations, to explain away the
3 money they were stealing from We Build the Wall. And so Tim
4 Shea says what he's going to do is he's going to create a
5 family trust that is cloaked. He says: It's veiled so no one
6 knows who owns it. He's saying he's going to -- basically,
7 he's saying he's going to hide what they are doing behind the
8 company so that no one knows that they are paying themselves.

9 So the defendant's words in Government Exhibit 29 are
10 the plan for the entirety of the criminal scheme here. This is
11 the solid f'ing plan, and everything the defendant laid out in
12 his texts are in this diagram showing how he received the
13 money.

14 Let's walk through it. Government Exhibit 901. I
15 just want to be clear about this. The defendant didn't just
16 lay out a criminal plan in text messages with Brian Kolfage.
17 That would actually be enough to convict him of conspiracy of a
18 criminal agreement. But he actually carried through it. And
19 we're going to walk through that. And that's how you know his
20 words mean exactly what he said and don't mean something else,
21 because literally his actions then matches up with his words.
22 So let's look at that.

23 The first thing Tim Shea said was: We need to create
24 companies that I hired you. And that's what he did. See it on
25 the chart. Within a week of the text message, he creates Ranch

M5VVSHE1

Summation - Mr. Roos

1 Property Marketing and Management. I put a red box on it. The
2 company is set up in Wyoming deliberately. It's "veiled" so no
3 one knows who owns the business, and it's hired by We Build the
4 Wall.

5 The next part of the plan that we just saw on the text
6 messages was saying, I'm paying you for a service, consulting.
7 And there it is, in the red box on the memo line for the wire
8 they say: Per invoice consulting. That's the pretend fake
9 reason for the payment, just like the defendant described in
10 the text message.

11 Then there's the last part of the plan, the
12 defendant's transfers between Shea and Kolfage. He said if
13 600K comes in and Shea transfers half to Kolfage, they need to
14 account for that. So here, take a look on this particular
15 transaction; when 30K comes in, Shea transfers 20 to Kolfage.
16 They need to account for that. And so they write Facebook
17 pages. That's the whole crime right there. That's the whole
18 solid plan. It's a whole criminal scheme. We Build the Wall
19 to Ranch Property, Ranch Property to Freedom Daily, which is
20 Brian Kolfage, and then paper the transactions in the middle.

21 Now, in his opening statement, defense counsel focused
22 on this particular text message, the solid plan text message,
23 and told you it means something else. Why did he say that?
24 Because this text message exchange alone is a reason to convict
25 the defendant. It's really a smoking gun. It matches up

M5VVSHE1

Summation - Mr. Roos

1 perfectly with the transactions. So he has to try to tell you
2 it means something it doesn't.

3 Now, I want to be clear about this. The defendant
4 doesn't have a burden in this case. He doesn't need to make
5 any arguments. There's no burden of proof for him. We have
6 the burden; the government has the burden. But when the
7 defense makes arguments, you have to ask yourself whether they
8 make sense and line up with the evidence.

9 So defense counsel in his opening statement said this
10 whole text message exchange is actually about construction, and
11 I wrote down what he said. He said -- this is his explanation:
12 Quote, when there's no permits and someone gets hurt or
13 concrete is not laid right, you go to jail. So defense counsel
14 would have you believe that the defendant is just really
15 talking about construction, he's really concerned -- he's
16 really concerned that if they don't lay the concrete right,
17 they would go to jail, because he's concerned about
18 construction safety.

19 Look at Government Exhibit 29. Here's what you won't
20 see in there: Discussions about people going to prison because
21 of quality of concrete, permits, workplace entries, etc. The
22 whole explanation is made up. And the reason you know that is
23 just find the message that says solid plan, read up, read down,
24 the messages right after make it clear it's about a criminal
25 conspiracy, it's not about workplace safety. So that's the

M5VVSHE1

Summation - Mr. Roos

1 third reason you know Tim Shea is guilty of wire fraud
2 conspiracy, because he spells it out in messages with his
3 partner in crime. And then he carries through on it. And he
4 knows it's a crime because he's talking about a plan to stay
5 out of prison to not get caught.

6 All right. Let's go to the next reason, reason number
7 four you know Tim Shea is guilty of participating in a wire
8 fraud scheme is because what he was doing is the exact same
9 thing as what the other members of the conspiracy were doing.
10 So this is your classic, sort of, like if it walks like a duck
11 and it quacks like a duck, it's a duck type situation. And if
12 Tim Shea is moving the money in the same way the other people
13 in the conspiracy are moving the money, and it's in the same
14 amounts, and he's doing it on the same schedule, on the same
15 timing, saying the same things, what does that mean? It means
16 he's participating in the same crime, in the same conspiracy.

17 So here's a payment -- here's a payment from We Build
18 the Wall to Steve Bannon's nonprofit called Citizens of
19 American Republic. It's Government Exhibit 902. The amount is
20 \$30,000. And after Citizens of the American Republic gets the
21 money, it kicks back 20 to Brian Kolfage. You remember the
22 text messages that we looked at a few minutes ago between
23 Bannon and Andy Badolato, his money guy, about paying Kolfage.
24 So that's in writing in black and white. And we've got it
25 right up on the screen in front of you. The screen shows

M5VVSHE1

Summation - Mr. Roos

1 \$30,000 to Citizens of the American Republic; 20,000, the
2 secret amount being paid to Kolfage for the month of April.

3 So Tim Shea, he isn't directly involved in this
4 transaction, right, nowhere on this screen. It's just Kolfage,
5 Bannon, and Badolato. But look what happens the very next
6 month. So we looked at April. Here's May. We Build the Wall
7 sends \$30,000 to Tim Shea's company, and he kicks back 20 to
8 account in the name of Freedom Daily, which is Brian Kolfage's
9 company. The amount from We Build the Wall is identical; the
10 amount kicked back to Kolfage is identical. They are one month
11 apart.

12 It's not like this is some sort of one-time fluky
13 thing where by chance the numbers happen to match up. Here's
14 June: \$50,000 from We Build the Wall to L. B. Moon, another
15 guy working with We Build the Wall; and then \$20,000 kicked
16 back to Brian Kolfage. And the next month, looks similar:
17 Nearly \$50,000 out of We Build the Wall, and this time to Tim
18 Shea's company again, then \$20,000 kickback to Brian Kolfage.

19 Let's recap this. So we have in writing messages from
20 Kolfage, Badolato, and Bannon agreeing that Kolfage will get
21 paid \$100,000 up front and \$20,000 a month secretly from We
22 Build the Wall. These are the messages. We've already looked
23 at them. Then we have payments from We Build the Wall to
24 Bannon's nonprofit and from the nonprofit to Kolfage. And the
25 amount of those payments, the first one is \$100,000, and it's

M5VVSHE1

Summation - Mr. Roos

1 \$20,000 a month.

2 And then we have the defendant's payments to Kolfage.
3 Those payments fit the same pattern as all the other illegal
4 kickback payments that are part of the conspiracy. They are
5 just like the payments being made by Bannon, being made by
6 L. B. Moon. They fit the amount. They are all \$20,000 or
7 more, they fit the format, they all involve a payment from We
8 Build the Wall, followed shortly after by a payment to Kolfage
9 and they fit the schedule. Kolfage is secretly promised
10 \$20,000 a month. The payments from Tim Shea fit in that
11 monthly schedule. They come monthly.

12 On that last point, let me show you this: This
13 information comes from Government Exhibit 902. Brian Kolfage
14 has a secret agreement to get 100,000 up front, and 20 a month,
15 right? Here's that \$100,000 at the top, plus the first six
16 months of pay. And you can see it. They pay through Tim Shea
17 for Ranch Property. It matches perfectly on this schedule of
18 payments to Kolfage. That's how you know Tim Shea is guilty of
19 participating in the wire fraud conspiracy.

20 And on the other hand, let's pull these out, if the
21 payments through Ranch Property, through Tim Shea, had nothing
22 to do with the scheme, as the defendant would like you to
23 believe, well, then where are the monthly Kolfage payments for
24 May, July, and August? Right? Here they are. The defense
25 believes they are missing. This isn't some coincidence where

M5VVSHE1

Summation - Mr. Roos

1 he just happened to have some totally unrelated business deal
2 with Kolfage in the same three months for the exact same amount
3 as the kickbacks. He was being paid in the other months.

4 And by the way he knows all these people, right. It's
5 not like by random chance some people totally unknown to Tim
6 Shea are paying Brian Kolfage, and then Tim Shea just happens
7 to pay Brian Kolfage. It isn't a coincidence. He knows these
8 people. He's doing the exact same types of transaction as the
9 other people he knows who are also working with We Build the
10 Wall. So he's plainly guilty of participating in the wire
11 fraud conspiracy. All right. That's reason number four.

12 Here's reason number five:

13 The kickbacks were paid with money stolen from We
14 Build the Wall. I've already said a bit about how the money
15 came to Tim Shea's accounts and how he kicked \$20,000 back to
16 Kolfage. But I want to make a point about why the money in
17 particular proves Tim Shea is guilty. So it's not just that
18 the payments came within days of Tim Shea getting paid by We
19 Build the Wall, sometimes even the same day. An important
20 point is that these payments to Kolfage would have been
21 impossible, totally impossible, without the We Build the Wall
22 money. So let me put it another way. The money that came to
23 Kolfage is the exact money; it's literally like a \$10 bill into
24 your wallet, take that \$10 bill, pay it to the next guy. We
25 know that because the balance in the accounts wasn't high

M5VVSHE1

Summation - Mr. Roos

1 enough for it to be another way.

2 So let me show you a few examples. And literally
3 didn't have the money otherwise. Here's Government Exhibit
4 901, \$100,000 to Tim Shea. The same day, \$50,000 goes to
5 Kolfage. Tim Shea literally could not have made that payment
6 without the donor money. The balance on this account was just
7 over 6,000 at the time.

8 Here's another one: \$50,000 from We Build the Wall to
9 Ranch Property, same day. \$25,000 goes from Ranch Property to
10 Kolfage. That payment would not have been possible without the
11 money stolen from We Build the Wall, okay?

12 So are we supposed to believe this is all just some
13 sort of coincidence; that the defendant had some completely
14 unrelated business arrangement where he'd just get money from
15 We Build the Wall and, by total chance, just happen to pay it
16 to Kolfage, 50 percent of it to Kolfage around the same day?
17 Of course not. This was a way to get Kolfage secret payments
18 from We Build the Wall.

19 The sixth reason you know Tim Shea is guilty of Count
20 One is he couldn't keep his story straight. So you jurors have
21 life experience. And our life experience tells us that when a
22 person has an ever-changing story, you know, a lot of
23 inconsistencies, a lot of conflicting explanation, lies that
24 don't match up with one another, well, in those circumstances,
25 it's a sign they aren't telling the truth, right?

M5VVSHE1

Summation - Mr. Roos

1 So here we have a lot of evidence of the defendant
2 with an ever-changing story, a lot of conflicting explanations,
3 many explanations for what the payments are, and they don't all
4 match up together. And that's a reason he's guilty of Count
5 One.

6 What am I talking about?

7 So in emails and financial documents and tax forms and
8 even during the trial, the defendant provided several reasons
9 why We Build the Wall was paying him and paying his company,
10 and reasons also why he and his company were paying Brian
11 Kolfage. So the reasons provided by the defendant that
12 contradict one another, right, they don't square up, and so
13 that's proof he was engaged in a fraud.

14 So let's start with the reasons why the defendant gave
15 for being paid by We Build the Wall.

16 You heard that Tim Shea and Ranch Property got about
17 \$400,000, not counting expense reimbursements and not counting
18 the regular pay that was going to Amanda Shea. So for the
19 first payment, Kolfage suggests to the defendant that he send
20 an invoice for Facebook pages. So the first payment was 100
21 grand, and he says, send an invoice for Facebook pages to We
22 Build the Wall for 100 grand. That's Government Exhibit 30.
23 If he really did the work and this was a real business, why did
24 Kolfage need to tell him, Hey, yo, send an invoice for 100
25 grand for Facebook pages? And why did he need to tell him what

M5VVSHE1

Summation - Mr. Roos

1 to put on the invoice? And why did he need to tell him how
2 much to bill for? He wouldn't. He wouldn't need to tell him
3 those things, and that's how you know this initial explanation
4 is made up.

5 And then it's an invoice to We Build the Wall for
6 consulting and construction expenses. That's Government
7 Exhibit 1700. So what consulting and construction expenses?
8 None. This is also just made up. And then the defendant
9 starts submitting these invoices for big dollar amounts like
10 this one, Government Exhibit 118-A, where he invoices for
11 \$48,762 for security services. Remember this invoice, by the
12 way? We're going to come back to it. And then there's this
13 invoice, it's Government Exhibit 122-A, where he claims to be
14 invoicing for \$61,760 for contracting military contractors,
15 police coverage, etc.

16 And then there's this invoice, Government Exhibit
17 125-A, where the defendant claims to be invoicing for drone
18 services. And then in October 2019, after he learns of the
19 criminal grand jury investigation, he's got another -- a new
20 reason, and it's this vendor services contract that he
21 backdates to March of the year. And that backdated contract
22 says the reason that We Build the Wall has been paying Ranch
23 Property is to "advise We Build the Wall on gathering
24 landowners' information to secure property." And then in --
25 all right. This is the agreement here where it says just that.

M5VVSHE1

Summation - Mr. Roos

1 And, of course, the contract, as I said, is backdated. He
2 wrote March 1st on it even though the data shows it was
3 actually from October. And we'll cover that further.

4 And then in 2020, when Amanda Shea gets a tax form
5 1099 for the payments to Tim Shea and Ranch Property. It has
6 yet another totally different reason for the payments; it's in
7 the first box that's highlighted, rent. This is Government
8 Exhibit 853. And Tom Bolus of the IRS, he told you that the
9 rent box is for things like renting space and equipment. So
10 for all the various reasons Tim Shea has already given for
11 these payments, Facebook pages, contracting, consulting, drone
12 services, security services, none of them have to do with rent.
13 If it was security contracting, it would go in box 7. If it
14 was employee compensation, the IRS said it would go in box 7.
15 If it was reimbursement, it wouldn't even have to go on here.

16 And that wasn't even the last explanation, by the way.
17 When Tim Shea then filed his taxes under penalty of perjury, he
18 says it's something totally different. He writes: other
19 computer-related services.

20 So, folks, it's impossible to square all these things.
21 The money from We Build the Wall to Tim Shea can't be for
22 Facebook pages and consulting and security services and drone
23 services and property research and rent and computer-related
24 services.

25 By the way, that pattern of changing reasons for the

M5VVSHE1

Summation - Mr. Roos

1 payments has continued during this trial. First defense
2 counsel suggested these payments were for reimbursements; then
3 he gave another reason which was security services; then they
4 showed you some contracts and some invoices about hiring guards
5 or flying a drone around; then he told you that Tim Shea was
6 actually helping We Build the Wall buy property, which is a new
7 sort of twist on the explanation. And for many of these,
8 there's no actual evidence that Tim Shea did that.

9 Let's say drone services, for example. The evidence
10 in the case is an invoice. It's two pieces of evidence in the
11 case. There's an invoice about hiring somebody to do drone
12 services. No evidence that actually that ever happened. And
13 there's an email where the defendant responds to a pretty high
14 quote for drone services.

15 So it can't be that the defendant was just doing a
16 bunch of different things for We Build the Wall, because the
17 reasons for the particular payments conflict with one another.
18 It's not just like substantively they conflict, like Facebook
19 pages is not the same as rent; but also the numbers just don't
20 add up. It can't be that literally like the same money, 100
21 grand, is for Facebook pages and also it's for computer-related
22 services or rent. And when someone can't get their story
23 straight and they tell you six different versions of it, you
24 know it's a lie. That's evidence that he's engaged in a fraud.

25 That's just half the transaction. Everything I was

M5VVSHE1

Summation - Mr. Roos

1 talking about, all the stories, all the reasons, we're just
2 talking about the reasons from We Build the Wall to Ranch
3 Property. What about what are the reasons he gives to Ranch
4 Property to pay Brian Kolfage, Tim Shea paying Brian Kolfage?
5 There's a lot of shifting stories there.

6 So the first is that Tim Shea is paying Brian Kolfage
7 for "social media accounts." What accounts? Why does it cost
8 \$25,000? There's no evidence in this case that Brian Kolfage
9 sold social media accounts to Tim Shea, and that's because it
10 didn't happen. It's a cover story. Then on your screen it's
11 Facebook pages as the reason for the payments from Tim Shea to
12 Brian Kolfage. What would Tim Shea possibly have paid his
13 business partner \$20,000 to do on Facebook? Nothing. This is
14 made up.

15 And then in October 2019, again, after they learn
16 about a federal criminal investigation, it's another backdated
17 contract, backdated to March. They put this together after
18 they learn of a subpoena. And the backdated contract says the
19 reason for the payment was Tim Shea was actually buying from
20 Kolfage an email list for \$150,000.

21 I'm going to say more about this in a bit when we talk
22 about Count Three. But notice how even on the face of this
23 document, the reason given for the payment contradicts the
24 other reasons Shea gave for the payments to Kolfage. Are we
25 supposed to believe that it was for Facebook pages and an email

M5VVSHE1

Summation - Mr. Roos

1 list, creating social media accounts and an email list? The
2 numbers just don't match up.

3 Here's the bottom line on this: The defendant
4 couldn't keep his story straight. He's got a dozen reasons of
5 why We Build the Wall is paying him. He's got several reasons
6 why he's paying Kolfage. The payments to Tim Shea came in with
7 enough money to kick back at least \$20,000 to Brian Kolfage,
8 okay? And the fact that Tim Shea couldn't keep his story
9 straight about why he's getting the money and why he's sending
10 the money proves he's guilty of wire fraud.

11 All right. Reason seven. Reason seven that the
12 defendant is guilty is he hid the payments to Kolfage from the
13 IRS. You heard from the defense in this case that the reason
14 Tim Shea was paying Brian Kolfage is because he bought a list
15 of emails. We just looked at the document that this is based
16 on. So they are saying, He actually did, he bought this list
17 of emails for \$150,000. And they say they weren't kickbacks,
18 they were just purchasing this list of emails. He's purchasing
19 an email list.

20 I've got a lot to say about this, okay, and we're
21 going to get to it in a bit. But one point I want to make now,
22 if it's true that the money he was paying was for some sort of
23 email list, a legitimate expense for some sort of email list
24 business, why didn't he report that as an expense to the IRS,
25 which you learned would allow him to lower his taxes? \$150,000

M5VVSHE1

Summation - Mr. Roos

1 as a business expense would have been a pretty big tax
2 deduction for him.

3 Defendant knows how to do tax deductions. He's
4 deducting 18,000 in depreciation on a \$70,000 Range Rover, and
5 the cost of a cell phone, his tax forms, an 800 number. But he
6 doesn't deduct the 150, which would be by far the largest
7 deduction for buying an email list. It would be in his
8 interest to deduct that 150.

9 Tom Bolus of the IRS told you, page 322 of the
10 transcript, that such a deduction can be -- "Can be taken to
11 bring down the actual taxable amount to give the taxpayer a
12 credit. It would be in the taxpayer's interest." So it would
13 be in Tim Shea, the taxpayer's, interest to take this
14 deduction. And he knows how to deduct the expenses. And if he
15 had really bought an email list for \$150,000, then he's got
16 this big deduction and it's in his interest to take the
17 deduction. And it brings down his taxable amount. And he'd
18 have every reason to do that, because as Tom Bolus also told
19 you, he ended up owing \$127,000 at the end of the year, so
20 there's plenty of room to take a deduction. But he doesn't.

21 You know, in his opening statement defense counsel
22 said, Tim pays taxes on all the money he gives to Brian. And
23 then defense counsel questioned why the defendant didn't deduct
24 the payments to Kolfrage.

25 MR. MERINGOLO: Objection.

M5VVSHE1

Summation - Mr. Roos

1 THE COURT: Overruled.

2 MR. ROOS: Here's the answer: The fact that the
3 defendant didn't take the \$150,000 tax deduction tells you
4 something. It tells you something. People take tax deductions
5 for legit business expenses. They don't take deductions for
6 payments they made when they are doing a crime. They don't
7 deduct their kickbacks or their money laundering. He doesn't
8 want an IRS agent to ask him why he was paying \$150,000 to
9 Brian Kolfage. And the easiest way to do it is not to put it
10 on your taxes. Take the deduction if it's a real business
11 expense.

12 But if you happen to pay \$150,000 in illegal
13 kickbacks, well, you probably don't want to bother with the
14 deduction. Tim Shea didn't want the heat, and so he just left
15 this off his taxes, and that's another reason you know this was
16 an illegal payment; and that's another reason why he's guilty
17 of wire fraud conspiracy.

18 So here's the eighth reason. I said eight reasons for
19 Count One. This is the eighth reason. The eighth reason is he
20 broke We Build the Wall's rules. The defendant and Kolfage
21 stole money from We Build the Wall secretly and without board
22 approval. And in the process, he broke We Build the Wall's
23 rules, and that's evidence that he was violating the law.

24 Let's start with the rules. We Build the Wall had
25 bylaws. It submitted those bylaws to GoFundMe and it filed

M5VVSHE1

Summation - Mr. Roos

1 them with the New York Attorney General. And you've seen
2 references to these bylaws in the websites and the social media
3 posts. The bylaws say that Kolfage would not take a salary.
4 That's the highlighted language in Government Exhibit 352.
5 Paying Kolfage violates We Build the Wall's rules. Okay?

6 The bylaws also have this conflict of interest
7 section, and it's something that Hanna Rubin from the New York
8 Attorney General's office testified about. She reviewed these
9 with you and they are up on the screen. So the purpose, as it
10 says, the purpose of this conflict of interest policy was to
11 protect We Build the Wall to make sure that the organization
12 didn't have any improper transactions, any sort of
13 inappropriate transactions that might benefit the private or
14 personal financial interests of someone who's involved in We
15 Build the Wall.

16 So the idea here is you've got this policy. It says
17 if you work for We Build the Wall as like its president or an
18 officer and you're going to do a financial transaction, that's
19 a potential conflict of interest. So we've got to have certain
20 checks in place to make sure there's not a problem and that it
21 doesn't hurt We Build the Wall. And the conflict of interest
22 policy says in those circumstances, if I'm the president and I
23 want to do -- I want to sell something that I make to We Build
24 the Wall, if I want to take a loan, if I want to do a deal with
25 We Build the Wall, I got to disclose it to the board, and the

M5VVSHE1

Summation - Mr. Roos

1 board has got to say thumbs up, like you got it, no problem,
2 okay. So we're looking for board approval and board -- telling
3 the board and board approval. It's basically against We Build
4 the Wall's rules to do a transaction involving someone who
5 works for We Build the Wall, unless it's told to the board and
6 the board says okay.

7 All right. Throughout all of 2019, the period we've
8 been talking about, not a single payment to Kolfage was
9 authorized by the board, and not a single transaction between
10 We Build the Wall and Ranch Property Marketing and Management
11 was authorized by the board. Here's the evidence of that.

12 This is Kris Kobach. Neither party called him during
13 the trial. There is though a stipulation by the parties of
14 what he would have said, and you can credit that as if he
15 testified. That's Government Exhibit S-10.

16 The stipulation says that Kobach was a member of We
17 Build the Wall's board of directors since January 2019. And
18 here's the key part: He was not informed of and had no
19 knowledge of payments from We Build the Wall to Brian Kolfage
20 in 2019 for compensation or salary. So this is very
21 incriminating. All those monthly payments to Kolfage of
22 \$20,000 that were routed through middlemen, they kept Kobach,
23 the board member, in the dark. The board did not know about
24 this. And that's important. That's how you know they violated
25 conflict of interest policy. If they had followed it, they

M5VVSHE1

Summation - Mr. Roos

1 would have had to disclose those transactions, those payments,
2 and Kobach or the board would have had to either approve or
3 deny them.

4 The same is true for the payments from We Build the
5 Wall to Ranch Property Marketing and Management. The
6 stipulation says Kobach was not informed of and had no
7 knowledge of the payments by We Build the Wall to Ranch
8 Property. So if the payments to Ranch Property were
9 legitimate, why weren't they approved by the board? Why didn't
10 the defendant -- why did the defendant Kolfage keep them a
11 secret from Kobach? Why violate this conflict of interest
12 policy? If these are legitimate payments for vendor services
13 or for doing work for We Build the Wall, why are these things
14 kept totally secret? Why are they violating the conflict of
15 interest policy? And the answer is because they were secretly
16 stealing the money. This was all a sham. It was all a
17 pretext. And it was something they knew that Kris Kobach, who
18 you heard is a credentialed lawyer, would not stand for; was
19 not going to follow it. So they do it secretly. They violate
20 the conflict of interest policy, and that's another reason you
21 know the defendant is guilty of wire fraud.

22 Give you another example. You remember this, you
23 remember Winning Energy, the official fuel of winners. It's an
24 energy drink. And here's the website. You can get a can --
25 you can get a 12-pack cans for 36.99. And this is Tim Shea's

M5VVSHE1

Summation - Mr. Roos

1 business. He brought the cans; one of them is in evidence. It
2 had no connection to We Build the Wall. Karl Mitchell, who
3 literally made these energy drinks from the DrinkInk, said
4 there was no connection; he never heard about it being part of
5 We Build the Wall. The website says nothing about We Build the
6 Wall. There's nothing on the can that says anything about We
7 Build the Wall.

8 But when Tim Shea wanted to buy what Mitchell called a
9 truckload of cans, 50,000 cans of this stuff, he needed some
10 money. He needed -- it's on here -- \$34,444.80 to buy 50,000
11 of these cans, pull up a truck with them.

12 So where did the money come from? The money comes
13 from We Build the Wall. His business partner, Brian Kolfage,
14 was the president. The defendant's wife was the treasurer.
15 This is Government Exhibit 903. They wire 38,500 from We Build
16 the Wall to Winning Energy. This is literally the next day
17 after the invoice. At the time Winning Energy has no money.
18 Look at the balance. \$21. And then almost all the money is
19 used to buy energy drinks. So the defendant stole money and
20 used it to buy a truckload of these themed energy drinks.

21 They papered it as a so-called loan. It was secret.
22 It was on Kolfage's computer, not in We Build the Wall's files.
23 The document was between Kolfage on behalf of We Build the
24 Wall, and Tim Shea on behalf of Winning Energy. It said the
25 full amount with interest would be repaid on August 3rd, 2020.

M5VVSHE1

Summation - Mr. Roos

1 That never happened. Defendant never paid any money back. He
2 never paid interest.

3 By the way, all that money was due before the
4 defendant was arrested; he just never paid any of it. No money
5 ever went back to We Build the Wall from Winning Energy. And
6 on a real loan like this, that's a problem. The bank takes the
7 money back. But nothing happened with the defendant, no
8 repayment, no collection, that's why you know it's not a real
9 loan.

10 And what happened after Kolfage betrays his duty to We
11 Build the Wall and sends money to Winning Energy? You've got
12 the kickback right here, a share of profits. They say it's
13 blowing up; the money from it should be deposited tomorrow.
14 Kolfage is going to get his share. But none goes back to We
15 Build the Wall. And here's what the stipulation about Kobach
16 says about Winning Energy: Kobach was not aware of any of the
17 payments from We Build the Wall to Winning Energy. That means
18 the wire transfers to Winning Energy was totally unauthorized.
19 It doesn't matter if it was a real or unpaid loan or just
20 papering another transaction, either way, the defendant and
21 Kolfage violated We Build the Wall's rules. Kolfage couldn't
22 just loan the money to himself for one of these businesses.
23 The whole thing was sort of a secret arrangement they came up
24 with behind Kobach's back as a way to commit this crime.

25 So those are the eight reasons that the defendant is

M5VVSHE1

Summation - Mr. Roos

1 guilty of conspiracy to commit wire fraud. I've put them up on
2 the screen and I'll just pause for a minute and leave them up
3 there.

4 All right. Judge Torres is going to tell you each
5 crime has some parts and they are called elements. And I'm
6 going to describe some of the legal instructions, but I expect
7 Judge Torres will give you the elements. And the instructions
8 she gives you is what controls and what you should listen to,
9 okay? I'm just giving you a little roadmap so you could follow
10 the evidence and how it matches up with the law.

11 As I said earlier, there are two objects or two parts
12 to this first count. That means there are two ways the
13 defendant committed the crime in Count One, conspiracy to
14 commit wire fraud. So the elements of each object are very
15 similar. Here are the elements that I expect you'll hear for
16 the first object. And this is the fraud on donors.

17 So the first part of Count One is the conspiracy to
18 commit wire fraud on the donors, and there are three elements:

19 First, an agreement of two or more people to do a
20 scheme to defraud or to obtain money through materially false
21 or fraudulent statements or promises. Second, that the
22 defendant, Tim Shea, agreed to participate in the scheme with
23 knowledge of its fraudulent nature and with specific intent to
24 defraud. And third, that in executing the scheme, the
25 defendant or one of this his co-conspirators used or caused to

M5VVSHE1

Summation - Mr. Roos

1 be used the interstate wires.

2 I'm going to go through these quickly because you're
3 going to hear the legal instructions from Judge Torres. This
4 is just to orient you in terms of the evidence we have.

5 So we could check off the first and second element.
6 We went through the evidence on this already; we just went
7 through the eight reasons why you know what the defendant did
8 with his co-conspirators was a scheme to defraud donors, to lie
9 to them, to make false promises to them in order to obtain
10 their money in a manner that was material to them, those false
11 statements where the 100 percent of the money goes to
12 rebuilding the wall and that not a penny goes to Kolfage.

13 Those eight reasons I just went through are also the
14 eight reasons that you know the defendant was participating in
15 that scheme. He was all over it. He knew it was fraudulent.
16 He was engaged in the secret illegal money transactions.

17 We can also check off the third element easily.
18 You've seen many bank records, charts, and diagrams showing
19 financial wires between companies or people in different
20 states. Those are all interstate wires.

21 So here's just two examples. These are from
22 Government Exhibit 1600. Wires from We Build the Wall to Tim
23 Shea for 100,000, goes from Florida to Colorado. Here's
24 another example: \$50,000 from We Build the Wall to Ranch
25 Property, Florida to Colorado again.

M5VVSHE1

Summation - Mr. Roos

1 And you're also going to hear from Judge Torres that
2 interstate wires can also mean things like besides wires. It
3 can be like an email that goes between states, a text message
4 that goes between states, phone calls between states, those are
5 all interstate wires. So the scheme obviously involves wires.

6 Like I said, the second object of Count One is very
7 similar and here are the elements: This is the fraud on We
8 Build the Wall, okay. And the first element is an agreement of
9 two or more people to do a scheme to defraud We Build the Wall
10 of its honest -- I'm sorry, scheme to defraud We Build the Wall
11 of its right to Brian Kolfage's honest services through
12 kickbacks. The second and the third element here are the same
13 as the first object. So I'm not going to talk about them
14 again, but let's talk about the first element briefly.

15 So I expect Judge Torres is going to tell you this:
16 The corporate officer, like Brian Kolfage, who was president of
17 We Build the Wall, owes what's called a fiduciary duty of
18 loyalty to the organization, which means he has a duty to put
19 the organization first. He has to put We Build the Wall first,
20 ahead of his own interests. So, in other words, the
21 organization is owed the honest services of the president,
22 that's the law.

23 And I expect Judge Torres is also going to tell you
24 that when an officer like the organization's president takes
25 actions on behalf of the organization in exchange for a

M5VVSHE1

Summation - Mr. Roos

1 kickback, that deprives the organization of the honest
2 services. And so what's a kickback? It's money in exchange
3 for doing something which then produces money that are kicked
4 back.

5 We already went through the evidence of Kolfage
6 breaching his duty of We Build the Wall by paying the
7 defendant. So Kolfage was responsible for wiring hundreds of
8 thousands of dollars to We Build the Wall. He's on the
9 checking accounts we've all looked at. And he did it without
10 board approval. We just talked about it at length. And in
11 exchange for violating that duty of loyalty to We Build the
12 Wall, he's getting a kickback from the defendant.

13 So here we see it, \$100,000 is wired from We Build the
14 Wall. Brian Kolfage is one of the two signers. He's texting
15 Tim Shea about doing the wire. And then the exchange for Brian
16 Kolfage taking that action, Tim Shea kicks back 50 grand. And
17 you've seen it in a lot of charts. I know you get it. It
18 happened with Ranch Property Marketing and Management; it
19 happened with Winning Energy. But the point is each time this
20 happens, it's a kickback in exchange for Brian Kolfage
21 violating his duty to We Build the Wall. So he's defrauding
22 the organization of its honest services and, in doing that, he
23 gets rewarded by the defendant, by his partner in crime, with a
24 kickback.

25 So that's the first element. And like I said, we

M5VVSHE1

Summation - Mr. Roos

1 already went through the two other elements, but the first part
2 is Count One, so we check off all those boxes.

3 All right. Count Two. Count Two is a conspiracy to
4 commit money laundering. The defendant is charged with
5 conspiring to commit money laundering in two ways. So there's
6 two types of money laundering, just like the first count. Two
7 types or two objects of wire fraud conspiracy; two types or two
8 objects for money laundering conspiracy.

9 So this is the first object. It's the first way that
10 the defendant conspired to commit money laundering. This is
11 called concealment money laundering, which means they are doing
12 the transactions to hide the source of the money. So I'll just
13 leave it on the screen for a second.

14 And here is the second object of Count Two, the second
15 way the defendant conspired to commit money laundering. This
16 one is pretty simple. It's basically a conspiracy to commit
17 money laundering by agreeing to do a transaction that has
18 \$10,000 or more from the wire fraud that we've already talked
19 about. So conspiracy to do a transaction of \$10,000 or more
20 with money from the wire fraud.

21 The evidence shows the defendant is guilty of Count
22 Two. He conspired to do money laundering. And before I talk
23 about why the defendant is guilty, let me just point out that
24 the eight reasons we've already gone through about the wire
25 fraud conspiracy apply equally here. Those are all reasons you

M5VVSHE1

Summation - Mr. Roos

1 know that the defendant was engaged in transferring money that
2 he knew was coming down a wire fraud and that he had an illegal
3 purpose in doing all of that. So they all apply here. They
4 are all reasons that the defendant was also guilty of this
5 count.

6 By the way, what I'm about to say also applies -- the
7 reverse is also true. I'm about to give you some reasons you
8 know why the defendant was engaged in money laundering. All of
9 that is also evidence of him participating in this wire fraud
10 conspiracy, okay? It's all ways in which he was attempting to
11 conceal his wire fraud.

12 So let's talk about the evidence of money laundering.
13 And for this, what we're going to talk about is Dustin Palmer's
14 testimony for a bit. Remember he stood up here he had the
15 microphone and the whiteboard; he was writing things out. He's
16 an expert in money laundering. And he told you the goal in
17 money laundering is to be able to use the money without people
18 knowing it's illegal.

19 So the whole point is to find ways to sort of conceal
20 the source, conceal where it's coming from, make it look like
21 it's not illegal. And he said money launderers use common
22 techniques, which are like -- I think he used the words like
23 means, methods, patterns. But what he's talking about is just
24 like, Here's the ways that money launderers do money
25 laundering. He said in a money laundering case, he might

M5VVSHE1

Summation - Mr. Roos

1 see -- it could be one, could be more of these techniques and,
2 he said, typical money laundering case, you've got like two to
3 five. Here we see six of those techniques. And those are the
4 six reasons you know the defendant was laundering money.

5 So the first reason you know the defendant was
6 laundering money, the first technique being used, is what
7 expert Dustin Palmer called layering. And layering just means
8 adding a transaction when only one or two will do. The goal is
9 to hide the source of the money by adding what Mr. Palmer
10 called an extra hop.

11 So here's an example of layering by the defendant.
12 We've seen this over and over and over again. There's an extra
13 transaction, there are two hops when -- which I've marked in
14 red circles here. We have We Build the Wall to Tim Shea, and
15 then Tim Shea to Brian Kolfage. So those are the extra
16 transactions.

17 If this was a legitimate transaction, they could have
18 done it with one, one hop. One will do, in Mr. Palmer's words.
19 And I've marked that on this; that's where the dotted red line
20 is between We Build the Wall and Freedom Daily. Look at this,
21 this whole thing was legit; they could have just paid it
22 directly, 50,000 right into Freedom Daily, right? But instead
23 of that direct payment, they do a technique of money laundering
24 which is multiple hops.

25 Let me explain this. All right. If I'm money and I'm

M5VVSHE1

Summation - Mr. Roos

1 trying to get to this point, this is the easy path. What the
2 defendant was doing was taking two hops. Start here, come over
3 here, come all the way over here, and then back to here. And
4 the reason for all the hops is because they don't want law
5 enforcement, they don't want the jury to see this path right
6 here. And that's what we've got on the screen. That's
7 layering.

8 The next money laundering technique we see in the
9 evidence is large round-dollar transactions. Mr. Palmer told
10 you that these large payments, usually with three or four
11 zeros, can be money laundering. We saw large round-dollar
12 transactions over and over and over again, particularly before
13 the defendant knew he was under investigation.

14 Here's some examples. All the red boxes. 100 in, 500
15 out; 50 in, 25 out. Sometimes there could be legitimate
16 reasons for someone having a large round transaction. I think
17 we all know that from life; there could be a good reason for
18 that. Not here though. The reason we know that is because
19 there are more signs in the transaction information that these
20 are money laundering.

21 The third technique of money laundering here is what
22 the defendant is writing on the checks and on the wire
23 transfers. As Mr. Palmer said: "The memo could say something
24 really unusual or odd like just car, and then be for a pretty
25 large amount of money, like \$200,000." And we see that type of

M5VVSHE1

Summation - Mr. Roos

1 pattern here.

2 So look at this. Here's an example: The defendant is
3 doing these large round-dollar transactions, and putting on the
4 memo lines things like "per invoice" or "social media
5 accounts." And that's like their version, that's their
6 equivalent of writing "car" on this thing, right? Huge wire
7 per invoice. No invoice number or anything.

8 And we know this is money laundering because the
9 defendant and Kolfage text about how they should be putting
10 explanations on memo lines to avoid detection. I'll show you
11 that. Here is Brian Kolfage to the defendant, Government
12 Exhibit 55: "When I get paid for anything from RPMM, I think
13 it needs to be annotated for what. So for all of these wall
14 chunks, when you send me a check, make sure it says
15 'merchandise' or something on it."

16 Merchandise or something, or something. If this was a
17 legitimate transaction, do you think they would be telling each
18 other, Just put something on it. Just put merchandise or
19 something on it. Big check. Big wire. Just put something on
20 it. This is Kolfage telling the defendant that for any payment
21 from Ranch Property to Kolfage, they need to come up with a
22 fake explanation for the payment, and that's money laundering.

23 And in particular, Kolfage tells the defendant that
24 they could be saying that he's being contracted for social
25 media. This is, of course, what Tim Shea writes on a check

M5VVSHE1

Summation - Mr. Roos

1 just a few days later: See, on April 16, 2019, Kolfage tells
2 the defendant to write that he got social media. Then, just
3 six days later, he writes, just that on -- he writes just that
4 on a payment to Kolfage. He writes "social media accounts."
5 So if this was real, Kolfage wouldn't need to tell him what to
6 write on a check. This is an example of using a vague memo as
7 part of money laundering to conceal the true purpose of a
8 transaction, which is paying a kickback to Kolfage, just as
9 Mr. Palmer told you.

10 There's a fourth technique of money laundering.
11 Dustin Palmer named fake invoicing or inflated invoices as a
12 technique of money laundering. And I asked him to explain
13 that, and here's what he said: He said, They are giving all
14 the extra money so they can launder that money and make it
15 appear legitimate. So we saw that several times.

16 Start with the example of the security invoices.
17 Defense counsel several times has said that the defendant
18 helped with security services, and so I want to look at one of
19 those invoices. So this invoice comes in from something called
20 Vision Quest Solutions, and it's for security work related to a
21 We Build the Wall event. And this is a real invoice. Vision
22 Quest Solutions real invoice. It says people that work
23 described I think like four or six people doing security work
24 for construction of some sort of event. And the invoice says
25 what they did. And the invoice goes to Tim Shea.

M5VVSHE1

Summation - Mr. Roos

1 And then the defendant makes -- the next day or maybe
2 it's 30 minutes later, he makes this invoice, and it's an
3 inflated invoice. It's a fake inflated invoice, and he's
4 billing for the security services provided by Vision Quest
5 Solutions, and he sends this to We Build the Wall.

6 And here's the real difference between these two
7 invoices: The defendant's invoice is about two and a half
8 times what Vision Quest Solutions actually billed. Vision
9 Quest billed \$20,000 for the actual security work. The
10 defendant invoices We Build the Wall for 48,762. And what did
11 he do with this money? Here it is. He paid Vision Quest
12 Solutions the money it was owed, you see the transfer, about
13 \$20,000. Then he kicks back. What does he do with the extra?
14 He kicks back 20,000 to Kolfage, just as they had secretly
15 planned, and he pockets the rest. That's a classic case of
16 money laundering right there. Jack up the invoice, come up
17 with an inflated fake invoice, use the extra money, the
18 proceeds of the crime, and launder it.

19 This wasn't just a onetime thing either.

20 The defense actually put a few of these inflated
21 invoices into evidence as their exhibits. And they might
22 reference them in their summations, so I just want to be clear
23 that all these things were a tool for money laundering. So
24 what we are looking at here are Defense Exhibits 623 and 623-A.
25 And these are the invoices for the drone services that they

M5VVSHE1

Summation - Mr. Roos

1 talked about, all right.

2 Let's zoom in. So the defendant sends Kolfage an
3 invoice and it says: Contract company to utilize commercial
4 drone services, \$46,725. So according to this invoice, the
5 defendant is hiring someone to do something with drones.

6 By the way, no evidence that Tim Shea -- no evidence
7 in this case that Tim Shea was actually doing anything with
8 drones. There's evidence that other people were doing stuff
9 with drones; there's Defense Exhibit 800, which is an example
10 of someone else sending a quote for drones, and Tim Shea
11 saying, Wow, this is really high. But there's no actual
12 evidence that Tim Shea did anything with drones other than send
13 an invoice.

14 So as you can see, he sends Brian Kolfage this email
15 with an invoice, \$46,725 for drone services. And he gets paid.
16 And what happens to the money? Drone services? No. Half the
17 money that was supposed to go for drone services goes to
18 Kolfage, and the other half goes to the defendant. Right out
19 of Ranch Property. Whole thing was a sham. No payment to a
20 drone company; just a way to launder money. So if the
21 defendant is showing you invoices, you should scrutinize them.
22 Look at the transactions in Government Exhibit 901, like this
23 transaction. They are just a way to launder money.

24 The fifth technique of money laundering was the use of
25 a company as an intermediary. It's Ranch Property. It was set

M5VVSHE1

Summation - Mr. Roos

1 up in Wyoming by the defendant. He knew how to make a company
2 in Colorado, we know that because he created Winning Energy in
3 Colorado. But for this one, his name wasn't visible as an
4 owner, and the address listed was for Wyoming, not Colorado,
5 where he lives.

6 You recall these messages. We talked about these
7 earlier, Government Exhibit 29. The defendant wanted to create
8 a company that was cloaked or veiled to keep his ownership
9 secret. Dustin Palmer told you there are certain states like
10 Wyoming, some countries outside of the United States where you
11 can create a company and keep your identity secret. And that's
12 sometimes done -- there's legitimate reasons for that, but it's
13 sometimes done by money launderers to conceal the source of
14 illegal money. Special Agent Yves Hunziker, who testified at
15 the trial, told you he knew from experience that money
16 launderers sometimes selected Wyoming because of the secrecy
17 rules.

18 So after the defendant creates Ranch Property, he and
19 his wife create a website and they say it's a splash page for
20 legitimacy. So splash page, it just means a single-page
21 website. And so they are making this so if someone Googles
22 them, something pops up. It's for legitimacy. So people would
23 think this was real; to hide what they were doing with the
24 company, which was laundering money.

25 Now, defense counsel suggested that a reason it was

M5VVSHE1

Summation - Mr. Roos

1 called Ranch Property was because it was the defendant's job to
2 find properties. And again, that's not something you need to
3 figure out in this case. You don't need to decide whether the
4 defendant was doing any work for land along the border. The
5 question again is whether they were using the company to
6 launder money. It could be that he's doing some work, but then
7 also the company is being used to launder money. And plainly
8 that's how Ranch Property was being used. So once the
9 defendant set up Ranch Property, he used it to launder money.
10 We've seen this exhibit before. Over and over the defendant is
11 passing money to Ranch Property and then transferring it as a
12 kickback to Brian Kolfage.

13 And I just want to mention two more reasons why we
14 know Ranch Property was plainly a way to launder money. So one
15 reason you know this was a vehicle to launder money is because
16 the defendant made up fake financials about the company to
17 serve his purposes. So when he filed, for instance, with the
18 Small Business Administration to get a loan in 2020, he said
19 Ranch Property had a total cost of goods sold of a little over
20 \$140,000. That's Government Exhibit 452 on the screen. So
21 he's saying, This thing is selling a lot of stuff. That's what
22 he tells the SBA when he gets this loan. But when he was asked
23 the cost of goods sold on his tax filings the same year, he
24 says zero. Same question, answer is zero. That's Government
25 852.

M5VVSHE1

Summation - Mr. Roos

1 The other reason you know this was a vehicle for money
2 laundering is because Tim Shea doesn't keep any money in the
3 account. The balance in the account ranged from zero to
4 something under 2,000. We saw a bunch of charts where the
5 balance was under like \$100. And when money comes in, he
6 immediately took it out. For example, the SBA loan, it comes
7 in, 60 grand in to Ranch Property, he takes it out the same
8 day, uses it on a bunch of personal stuff. What does that
9 mean? It shows that Ranch Property is just a pass-through;
10 it's a way, it's a vehicle, for just moving money around.

11 So let me put this all together. Defendant says he
12 wants to make a company that is cloaked or veiled to hide his
13 secret -- hide his identity. He sets up Ranch Property like a
14 week later. He sets it up in a state where he can keep his
15 identity secret. His identity is, in fact, secret. He and his
16 wife then create a website. It's a splash page for legitimacy.
17 It doesn't say his name on it, it doesn't really say what they
18 are doing, it's got an 800 number. Nowhere are the words "Tim
19 Shea" or "Amanda Shea" on it.

20 And then the finances associated with the thing are
21 kind of screwy. Like he's giving conflicting reports to the
22 IRS and the SBA; he's draining the account constantly; he uses
23 the money for personal expenses; he never keeps money in there.
24 So regardless of what you think about what Tim Shea was doing
25 for We Build the Wall, regardless of whether he ever used the

M5VVSHE1

Summation - Mr. Roos

1 name Ranch Property for something related to We Build the Wall,
2 the evidence shows that he was using the Ranch Property bank
3 account to launder money for all the reasons I just mentioned.

4 All right. Five techniques. This is the last
5 technique of money laundering that we see. And that is
6 papering of transactions. So here's Dustin Palmer's testimony:

7 Papering a transaction is when the parties will put
8 together papers either before or after the transaction to make
9 sure that others, when they see the transaction, get the
10 appropriate impression. It can sometimes be used in a
11 fraudulent way, in this case like for money laundering. If
12 they want people to think something was transacted, they might
13 write that down even though it was actually not.

14 So there was papering in this case. We're going to
15 talk about it in depth in a bit. So I'm just flagging it now.
16 But the defendant papered his illegal transactions with Kolfage
17 by making this backdated contracts. There are two of them.
18 Dustin Palmer told you backdating was a tool or a technique of
19 money launderers to paper transactions. So as we'll discuss,
20 the defendant created these false documents that are backdated;
21 and when he did that, he was engaging in money laundering.

22 All right. That's the six techniques of money
23 laundering. More techniques, the expert said, you should
24 expect even to see in a typical money laundering case. That's
25 how you know the defendant is guilty of money laundering.

M5VVSHE1

Summation - Mr. Roos

1 This, like for Count One, has elements, parts of the crime.
2 Here they are. I will just leave that on for a second.

3 All of these elements are proven. Let's check them
4 off. We talked about all the evidence that the defendant and
5 Kolfage engaged in many transactions to launder stolen money
6 from We Build the Wall. You've heard the evidence over the
7 last hour that the money came from fraud on donors, on We Build
8 the Wall itself; you've heard all the reasons why the defendant
9 is guilty of that wire fraud. So the first three elements are
10 proven. And we just talked through the six techniques of the
11 ways in which the defendant laundered money to conceal the
12 nature, the source, the location, of where the money came from
13 and what they were doing. So that's the last element, and
14 that's also proven.

15 As I mentioned, there are two parts to Count Two, two
16 types of money laundering. Here's the second one: Money
17 laundering over \$10,000. Here are the elements. And all the
18 evidence we just talked about, they all -- they meet all the
19 elements here.

20 So first, there were interstate financial
21 transactions. We've talked about that. We've looked at how
22 the wires went from state to state. Second and third, the
23 transactions involved money that came from wire fraud in an
24 amount greater than \$10,000. So you know the defendant was
25 transferring amounts coming out of We Build the Wall, passing

M5VVSHE1

Summation - Mr. Roos

1 it to Kolfage, and they were greater than 10,000. You know the
2 defendant acted knowing where the money came from. We went
3 through the eight reasons he's guilty; we went through the six
4 ways you know it's money laundering. And then finally, the
5 transactions took place in the United States. You know that's
6 true as well.

7 All right. We're through the first two counts, we've
8 done the majority of the work at this point. Count Three is
9 the last crime we're going to talk about. It's falsification
10 of documents to obstruct justice. That's Count Three.

11 Quick overview.

12 October 2019, the defendant and his co-conspirators
13 learn about a criminal grand jury subpoena that I'm going to
14 show you in a second. And they found out about the subpoena,
15 which was supposed to be secret, because it was leaked.
16 They're worried about it, so they sign two backdated contracts
17 to cover their tracks. The contracts give fake reasons for why
18 the money transfers are happening. They did that to have a
19 cover story for a day like today and to obstruct justice.
20 That's the whole crime.

21 So, like I said, time period, October 2019. This is
22 the subpoena, Government Exhibit 551. It goes to Synovus Bank.
23 Now, remember Synovus Bank, Synovus Bank is one of those banks
24 that had the accounts for We Build the Wall. And so part of
25 the reason they are thinking about Synovus bank here is because

M5VVSHE1

Summation - Mr. Roos

1 in the Synovus Bank bank records, there's records of all these
2 transfers going from We Build the Wall to Tim Shea's company,
3 Ranch Property.

4 So Richard Billue was the banker who testified. He
5 gets this thing. He doesn't read all the way through it. He
6 misses the warning that it was illegal to disclose the
7 subpoena. And he calls Rich Kaye, who is working with We Build
8 the Wall. He tells Rich Kaye that the U.S. Attorney's Office
9 is doing this investigation; he tells him the crimes that are
10 under investigation.

11 Rich Kaye immediately calls Andy Badolato. You
12 remember this phone chart. So he calls Andy Badolato, the
13 money guy. Badolato calls Kolfage and Bannon. Kolfage tells
14 Tim Shea. And you could tell they are all kind of freaking out
15 about this. There's a lot of phone calls. Badolato is texting
16 Bannon. Urgent, 911, call me. Says he doesn't want to talk
17 about it over text, just over the phone. And they are
18 worried -- the defendant is worried that they are going to get
19 caught. We know that from the text messages and we know from
20 what they do next.

21 So Kolfage then tells Tim Shea and his wife, after
22 learning more about the subpoena, to "get RPMM stuff ASAP."
23 That's Government Exhibit 53. RPMM, as you know well, is Ranch
24 Property Marketing and Management. So he's saying subpoena,
25 get the Ranch Property Marketing and Management stuff ASAP.

M5VVSHE1

Summation - Mr. Roos

1 Folks, who learns about a grand jury subpoena that's
2 part of a criminal investigation and races to get stuff about
3 Ranch Property Marketing and Management as soon as possible?
4 You can look at the subpoena. It says nothing about Ranch
5 Property Marketing and Management on it. So why are they
6 racing to get the RPMM stuff ASAP? The reason is because they
7 knew exactly what this was about. This was the classic, you
8 get the thing, you're like, I know what this is about.

9 And so what they are doing is they get the subpoena,
10 and they are like this is the oh, shit moment where they are
11 like, Guess what? We know this is about payments through RPMM.
12 Let's get the RPMM stuff. So they knew what the crime was, and
13 that's why Kolfage responds to the subpoena by telling the
14 defendant to get that stuff ASAP.

15 What are they talking about when they say the RPMM
16 stuff? They are talking about two backdated contracts. Why
17 did they need those two contracts? Because there are two parts
18 to the fraud and money laundering conspiracy. There's money
19 coming from We Build the Wall to Ranch Property, and there's
20 money from Ranch Property going to Kolfage.

21 Here's the first backdated document. It's supposed to
22 be a "vendor services agreement" between We Build the Wall and
23 Ranch Property, and it's dated March 1, 2019. This document
24 exists to provide an explanation for why We Build the Wall is
25 paying Ranch Property. It says it's for gathering info on

M5VVSHE1

Summation - Mr. Roos

1 landowners. But this agreement was just to paper the
2 transaction. It says March 1, 2019, but they actually put
3 together and finalize it in October 2019, after learning of the
4 subpoena.

5 Here's the evidence to that: On the left is the day
6 Tim Shea uploads the draft document to Google documents,
7 October 19, 2019, two days after Kolfage says, Get me the RPMM
8 stuff. And the same day he sends a PDF of the document to
9 Amanda Shea. Again, October 19, 2019, a week after they learn
10 about the subpoena.

11 Andy Crain, who analyzed the data about the document,
12 looked at the metadata for this agreement and saw it was last
13 modified in October 2019, long after it was dated. So they are
14 backdating this document to make it look like it's an agreement
15 that was in place from the beginning, long before they knew
16 they were under investigation.

17 And isn't that convenient? Wouldn't you want -- if
18 you're under a criminal investigation, wouldn't you want a
19 document that says, Oh, look, we were -- these payments are
20 legitimate. There is an agreement that is from March at the
21 very beginning, where we signed up and said, Tim Shea's company
22 was paid by We Build the Wall. So that's why they are
23 backdating this thing, because they want something that
24 predates the investigation that they can point to and say, Hey,
25 it was all legit.

M5VVSHE1

Summation - Mr. Roos

1 And the defendant did the same thing for the other leg
2 of the transaction. He put together a signed contract between
3 him and Kolfage, backdated to March 29, 2019, to explain why he
4 was paying Kolfage. Okay. So there's two of these things.
5 This is the agreement that says he's paying Kolfage for a donor
6 list, an email list. But the email evidence shows this
7 document is not from March 29, 2019, they are executing it on
8 October 29, 2019. That's Government Exhibit 133.

9 Andy Crain looked at the metadata on this document.
10 He found it was created, modified, and signed between October
11 22 and October 29, 2019, after the defendant learned of the
12 subpoena. There was no evidence, according to Crain, that this
13 document was created in March 2019. So this is a backdated
14 contract created after they learn of the subpoena.

15 Here are the elements of Count Three:

16 First, the defendant falsified or caused the
17 falsification of a document; second, the defendant acted
18 knowingly; third, the defendant acted with intent to impede,
19 obstruct, or influence an investigation within the jurisdiction
20 of a department or agency of the United States.

21 We can go through this easily.

22 First, the evidence shows that the defendant created
23 the RPMM vendor services agreement and he signed the backdated
24 donor list agreement. I expect Judge Torres is going to tell
25 you – and you should follow her instructions – that a document

M5VVSHE1

Summation - Mr. Roos

1 that is falsified -- you see that word "falsified" or caused
2 the falsification if it misrepresents the true nature of the
3 parties' agreement and/or if it's backdated. And here, both
4 agreements are plainly backdated. And you know from the email
5 and from the metadata that they also misrepresent the true
6 nature of what was going on. They say it was for vendor
7 services or to buy an email list; but we know this is actually
8 about money laundering and kickbacks.

9 The agreements paper these things in the way they do
10 because they want to describe them as something -- they want to
11 describe these illegal transactions as something they are not,
12 but they are falsified documents. So let's check that off.

13 The next element is the defendant acted knowingly.
14 That's obvious. You know from the emails and text messages
15 about the subpoena and the documents that he knew exactly what
16 he was doing; so we check that off.

17 And the last element is that the defendant's intent
18 was to impede or obstruct or influence an investigation.
19 You're going to hear that an investigation within the
20 jurisdiction of a department or agency of the U.S. includes a
21 grand jury investigation. The subpoena here was issued as part
22 of the Southern District of New York's grand jury
23 investigation. And you know the defendant's actions were to
24 impede or obstruct that investigation or influence it because
25 he made these agreements shortly after learning of the

M5VVSHE1

Summation - Mr. Roos

1 subpoena. And we looked at the text messages that showed
2 they're reacting to the subpoena, they are worried, they are
3 switching to Signal, Wickr. So he's focused on having a cover
4 story. And the defendant did all this because he knew
5 investigators were looking at him. That's why he comes up with
6 these explanations for his kickbacks. So we'll check that box
7 off. And the defendant is guilty on Count Three because of the
8 backdated agreements that provide false cover stories for why
9 he was getting paid and he was making payments to Kolfage.

10 So we're now through the counts. It's all three
11 counts. We're through them. The defendant is guilty of Counts
12 One, Two, and Three.

13 Judge Torres is going to tell you the government has
14 to prove one more thing, which is called venue. Venue means it
15 was proper to bring this case here in this courthouse in the
16 Southern District of New York. Southern District of New York
17 are places where you all live; so Manhattan, the Bronx,
18 Westchester, the other northern counties.

19 We only need to prove this by a preponderance of the
20 evidence. So it's a different burden of proof. Preponderance
21 of the evidence just means it's more probable than not. You're
22 going to hear the government doesn't have to prove the whole
23 crime was committed in the Southern District or the defendant
24 was even in New York. All that's necessary for this is just
25 that it's likely -- more likely than not that any act in

M5VVSHE1

Summation - Mr. Roos

1 furtherance of the crimes occurred in this district. And that
2 act can be done by the defendant or one of his co-conspirators.
3 So somebody in the conspiracy has to have done something in New
4 York in furtherance of the conspiracies.

5 So one of the acts in furtherance of the conspiracy
6 was filing registration statements to raise money in the
7 Southern District of New York. That's Government Exhibit 351
8 and 352. They did this so they wouldn't get in trouble getting
9 New York donors to donate to We Build the Wall. Part of that
10 filing included the bylaws that said Kolfage would not take a
11 penny. So they made this false promise to donors in New York.

12 Here's another act in the Southern District of New
13 York caused by the defendants and his co-conspirators. This is
14 donor data from GoFundMe. There were a ton of donors in the
15 Southern District of New York. They accessed the GoFundMe page
16 from the Southern District, and they made their donations in
17 this district. Each donor was a victim, so each was lied to;
18 each was defrauded. These are New Yorkers, who are just like
19 Nicole Keller and Bill Ward.

20 The defendant also set up a P.O. Box in Colorado to
21 get checks from donors. Here are the texts that prove the
22 defendant is the one who set up the P.O. Box.

23 This is Government Exhibit 271. It's a spreadsheet
24 that shows people in New York, including in the Southern
25 District, mailed checks from this district to the defendant's

M5VVSHE1

Summation - Mr. Roos

1 P.O. Box. This shows that people who live in this district and
2 other places in New York were defrauded by the defendant and
3 his partners in crime. These are some of those checks. They
4 are from New York, New York; Sleepy Hollow; Suffern; North
5 Salem; Pleasantville; Salt Point. All Southern District.
6 That's direct involvement by the defendant in receiving
7 donations from this district.

8 (Continued on next page)

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M5v3she2

Summation - Mr. Roos

1 MR. ROOS: So the defendant and his co-conspirators
2 caused donors in this district to write checks and send them to
3 the defendant.

4 And then there is evidence that some of the
5 defendant's co-conspirators were in New York at various points
6 central to the conspiracy. So for instance, in January 2019,
7 between January 4 and 7, Bannon and Badolato were both in New
8 York. And you know that from the Loews Hotel receipt and the
9 text message here up on the screen.

10 And while Badolato and Bannon were in New York,
11 they're communicating constantly with Kolfage about building
12 the wall, GoFundMe, using the money. This is like less than a
13 week before the big January 11 announcement on GoFundMe.

14 And here is example of a call log just between Kolfage
15 and Badolato in New York. Here is an example of the type of
16 things they were talking about. This is January 5, so while
17 Badolato and Bannon were in New York, Kolfage has clearly just
18 spoken to them, and he says to Tim Shea that Steve needs the
19 mail count. He thinks it is 30K. They are talking about the
20 money that's come in. Kolfage is asking this info for Shea
21 because Bannon is trying to direct the flow of money for We
22 Build the Wall. And that's another act in furtherance of the
23 conspiracy.

24 One final piece on venue. For Count Three, the
25 investigation came from the Southern District of New York.

M5v3she2

Summation - Mr. Roos

1 This is the subpoena. Judge Torres will tell you that venue
2 for the last crime, fabrication of documents, is proper in the
3 district where the investigation was based. So that's this
4 district. So when defendant tried to obstruct an investigation
5 from here, that's sufficient for venue on last crime.

6 So those are all the reasons that venue is proper here
7 in New York. On this, you need to find it is more probable
8 than not.

9 We're through the charges, we're through all the
10 evidence. We're almost done. There is one last thing I want
11 to cover before I sit down, and that's some of the defense
12 arguments, just one in particular.

13 As I said earlier, the defendant doesn't have any
14 burden in this case, and the defense doesn't need to make any
15 arguments. But when the defense makes arguments, you should
16 see if they match up with the evidence. You should think about
17 them like you would any other argument. Do they make sense?
18 Are they supported by evidence?

19 We've already talked about some of these defenses,
20 like the Tim Shea did work defense, or one I'm not going to
21 bother talking about, because it is a distraction, is the but
22 we built the wall defense.

23 But there is one defense I want to talk about a little
24 bit more. That's the what I am going to call we really had a
25 handshake deal defense. So, the defense wants you to think

M5v3she2

Summation - Mr. Roos

1 that there was a handshake deal back in March. And the reason
2 they want you -- they are making this argument there was a
3 handshake deal is because the computer evidence shows that
4 these documents, these contracts, these fake documents, were
5 clearly created in October. So, that's pretty damning because
6 if they're created in October, it couldn't have been created in
7 March. So the only real explanation is, oh, well, we had a
8 handshake deal, we didn't write it down until October.

9 Before I talk about what the evidence shows, let me
10 talk about what there is no evidence of. There is no evidence
11 that these contracts existed in March. There is no handwritten
12 notes in the case, there is no handwritten version of the
13 contract, there are no e-mails at the time saying we have this
14 handshake deal, there are no text messages in March saying we
15 have this handshake deal. None of the payments that go from
16 Tim Shea to Brian Kolfage say something like for handshake deal
17 or for contract or anything like that. There is no evidence of
18 any form that this thing existed, written or not, back in
19 March 2019.

20 On the other hand, you know that the defendant created
21 these backdated contracts in October 2019. We looked at the
22 computer evidence of that. But there is also additional
23 evidence that this arrangement didn't exist, and those are
24 found in the defendant's words. So let me show you.

25 So if Tim Shea actually had a handshake deal back in

M5v3she2

Summation - Mr. Roos

1 March 2019 to buy a donor list from Brian Kolfage for \$150,000,
2 why is he making these monthly payments in smaller amounts and
3 why is he writing different things on the memo lines. How can
4 the payments be for buying an e-mail list, and also social
5 media accounts. Why does this not match up to the reason he's
6 given you, which is buying an e-mail list. The reason is
7 because it is a lie.

8 Here is another issue with this argument. If Tim Shea
9 bought an e-mail list from Brian Kolfage in March, why is he
10 saying stuff in June or July that makes it clear he didn't have
11 an e-mail list.

12 Let me show you. You know they didn't have a
13 handshake deal in March because Tim Shea is saying -- this is
14 in June -- imagine what we could do with the big list. So in
15 June he's imagining in June what can they do with a big e-mail
16 list. And when Kolfage tells him it is actually a huge process
17 to deal with the e-mail list, because they have to clean up the
18 data, they have to process it, how does he respond. What does
19 Tim Shea say. He says, oh shit, I had no idea it was so in
20 depth.

21 Does that sound like a guy who already bought this
22 e-mail list three months before? Does it sound like a guy who
23 would even buy a e-mail list or would want to do it? It
24 doesn't. It doesn't sound like a guy who had a handshake deal
25 three months before to buy it. And that's why this defense

M5v3she2

Summation - Mr. Roos

1 isn't based on the evidence. The evidence shows the opposite.

2 Here is another example of that, Government Exhibit
3 119. Tim Sheas to Kolfage in July now, we definitely need to
4 come up with some side businesses from all these opportunities,
5 like e-mail lists. So again, the defense is daydreaming about
6 things he could do with We Build the Wall, side businesses and
7 he suggests e-mail lists.

8 Wait. I thought this guy already bought this e-mail
9 list back in March of 2019 for \$150,000. Why is he now in July
10 talking about doing this deal? The answer, you know, is
11 because there never was a handshake deal. Right. He is
12 texting, he's e-mailing about this in June and July because it
13 did not exist in March.

14 Those contracts were made in October, not in March.
15 They were to paper the transactions. It was done to obstruct
16 justice. They were intended for a day just like today, so that
17 the defendant would have an excuse, he would have a distraction
18 in federal court.

19 Ladies and gentlemen, you know the truth. The
20 defendant and his co-conspirators, they lied to donors, they
21 lied to the board of We Build the Wall, they stole and looted
22 from the organization, they laundered the money through the
23 defendant's business. He paid kickbacks, they kept all this a
24 secret. And when he learned he was under federal
25 investigation, he created two more fake documents to cover his

M5v3she2

1 tracks.

2 And for all those reasons, he's guilty beyond a
3 reasonable doubt. So hold him accountable. Find him guilty.

4 THE COURT: Members of the jury, we have heard the
5 summation of the prosecution. But the trial is not yet over.

6 You're finished, correct?

7 MR. ROOS: Yes.

8 THE COURT: Okay. And we still have the summation of
9 the defense and the rebuttal and my instructions on the law.

10 We're going to take a bathroom break now. I'll be
11 calling you back in to hear the defense summation, but you're
12 still not permitted to discuss the case amongst yourselves or
13 with anyone else. Don't permit anyone to discuss it in your
14 presence. I know it is extremely tempting, but don't do it.
15 I'll call you back shortly.

16 (Jury excused)

17 THE COURT: All right. So we'll take 10 minutes.

18 MR. MERINGOLO: Thanks, Judge.

19 (Recess)

20 (in open court; jury not present)

21 THE COURT: All righty, let's get started.

22 MR. MERINGOLO: Your Honor, we have an issue here.

23 THE COURT: What is that?

24 MR. MERINGOLO: The government has Exhibit 20 printed
25 out in their exhibits. Now I'm going to reference it, it is a

M5v3she2

1 critical piece of evidence for the defense, and they said they
2 changed it mid-trial. I mean, if they did, it is complete
3 oversight for me. But, it was in the binders and it is what
4 we've been holding and anticipating this whole time.

5 Now I put it up there, obviously, it's GX 20. I
6 believed it was in and now they're telling me it's not. They
7 cut off the two pieces, the two top text messages.

8 THE COURT: I'll hear from the government.

9 MR. ROOS: Yes, your Honor. We are talking about
10 background Government Exhibit 20. When the government -- there
11 initially was a different version of Government Exhibit 20. We
12 never offered it. The defense never offered it. We then
13 offered a version of Government Exhibit 20, it is at page 475
14 of the transcript. Mr. Sobelman read through it and that's the
15 one that's in evidence.

16 THE COURT: So in other words, the one that you
17 referenced today in your summation is the same that was
18 admitted into evidence?

19 MR. ROOS: Correct.

20 THE COURT: Well, then, that's what you have to deal
21 with. You were here and awake during the trial.

22 MR. MERINGOLO: It is -- I had their exhibits, it is
23 complete, it is oversight by me. It is what it is. I just, I
24 mean, these are all bait and switch things.

25 THE COURT: No, I don't call that a bait and switch

M5v3she2

1 when they admit a document, they put it up, they talk about it
2 for a long time, and you're present. That is not bait and
3 switch.

4 MR. MERINGOLO: They only talked about two lines in
5 it. I had, when I went to it, in the thing they're only
6 talking about two lines, which is my whole theory. They only
7 take two lines at a time. I didn't know they only took two
8 lines and deleted the top part of the exhibit they printed for
9 me.

10 MR. ROOS: We didn't delete from the top portion. It
11 is from Andy Badolato's iCloud, but it is just a different text
12 message. We just didn't end up, we never offered the text
13 message exchange he's interested in. We offered a different
14 exhibit. I showed it in the government closing. And we just
15 never offered this. Mr. Sobelman read through Exhibit 20. I
16 don't know why he never showed it.

17 MR. MERINGOLO: It is my fault then. It is my fault.
18 I'll scratch it from --

19 THE COURT: Let's get the jury.

20 (Jury present)

21 THE COURT: Do the parties agree that all the jurors
22 are present and properly seated?

23 MR. ROOS: Yes, your Honor.

24 THE COURT: Please be seated. Members of the jury,
25 you'll now hear the summation of the defense.

M5v3she2

Summation - Mr. Meringolo

1 MR. MERINGOLO: Good morning, everyone. I hope
2 everyone had a good weekend. I know I drink a lot of Diet
3 Coke, but only during the trial.

4 First I want to thank you. This isn't an easy thing
5 to do. No one woke up last Monday and said I want to be on the
6 jury. And you spent a week and a day with us listening to
7 evidence, and I saw everybody taking their notes, and it is
8 very appreciated.

9 The government is doing their job, I am doing my job,
10 I thank Judge Torres. And most importantly, which no one ever
11 does, I thank the court reporter. Because without the court
12 reporter, there would be no testimony taken or given or
13 documented.

14 The government said a lot of things in their opening,
15 and after their opening I wanted to run out the door and say oh
16 my God, what happened. You know, if I believed every word they
17 said, you know, and how they put the evidence in, you know, you
18 would vote guilty.

19 But there are two sides to every story like we all saw
20 during the trial. Every time someone got up on direct
21 examination, perfectly answered and everything went smoothly.
22 But then when they got up on cross-examination, maybe the
23 evidence wasn't so smooth, maybe there were different things,
24 and that's what reasonable doubt is. You can't have a
25 streamline of evidence to just go through without someone

M5v3she2

Summation - Mr. Meringolo

1 trying to combat that. Any time you combat that, it puts
2 doubts in, especially certain witnesses that we had.

3 When we started the trial last Tuesday, I opened up
4 running around, they're going to get a text message over here
5 and pull a text message from over here. I said they are going
6 to pull a story together. You've seen when they got the
7 indictment. It is in evidence. It is a stipulation. Tim Shea
8 was arrested on August I believe 20, 2020. Not one witness you
9 heard, ladies and gentlemen, met the government before he was
10 indicted. So I submit to you, they get an indictment, and then
11 they put the pieces together, which is what they did here, and
12 developed their story, but their story has doubts. And their
13 story has reasonable doubts. And I submit to you common sense
14 equals reasonable doubt equals not guilty.

15 Now, my adversary just went and said, why didn't he
16 pay -- why didn't he 1099 Freedom Daily? Everybody must have
17 said, well, why didn't you 1099 Freedom Daily to lower his tax
18 liability. He would lower his tax liability by \$75,000, right.
19 I'm just, I don't know what it is in Colorado. State, city, we
20 know if you make that money, maybe you have to pay 50 percent,
21 40 something percent, whatever it will be. I am not good at
22 math, let me just use that. Why wouldn't he do that? Why
23 wouldn't he lower his tax liability? Isn't that common sense?

24 The government says the money laundering guy, who he
25 gave \$65,000 to, to put up a couple of charts, he said, oh,

M5v3she2

Summation - Mr. Meringolo

1 that's what they do. No. No, if you are a criminal, you want
2 to pay less taxes. That's common sense.

3 And now we talk about this list. They put an e-mail
4 in at the end. The list. This e-mail list. It is undisputed
5 how valuable this e-mail list is. It's undisputed that
6 Mr. Kolfage owned, being the president, owns that e-mail list.
7 It is undisputed that they've been in business 2018, before
8 2018 I think according to the woman who came from North
9 Carolina or South Carolina, that they flew in, maybe even
10 before that I think the evidence may show. But we definitely
11 know 2018, 2019, 2020, that Mr. Shea and Mr. Kolfage was in
12 business.

13 And then the government just said again on their
14 closing that Freedom Daily was a shell, a shell. But, if we
15 recall, remember that gentleman who the government, every chart
16 that's in this case, no witness said I did the charts. They
17 sat on there and they said the government gave me the charts,
18 and I verified it. The government gave me the charts and I
19 verified it. I believe three witnesses talked -- maybe four,
20 talked about charts. None of them had anything to do with the
21 charts. The government had something to do with the charts.
22 They put the text messages, the e-mails, and everything that
23 was in those charts, they did that.

24 So when they take a text message from January and then
25 put it next to a text message from April, when the witness said

M5v3she2

Summation - Mr. Meringolo

1 there were hundreds of text messages. The evidence in this
2 case from the guy we paid \$20,000, the metadata guy. The meta
3 verse. He gave them \$20,000 to tell us the e-mail came from
4 Rich Kaye. He said he reviewed 40 phones and e-mail accounts
5 and computers that were all gathered during the search when
6 they arrested people. Okay. So, they had everything.

7 And then the government, the evidence showed, remember
8 they put the text message in, ladies and gentlemen, oh, Tim
9 Shea and everybody they are going on Signal. And that's like,
10 oh, wow. Signal, WhatsApp. They don't want to be detected.
11 Saying this is nefarious. It is common practice for people to
12 use that, but they are saying, look, they got the subpoena then
13 they are on Signal. When the individual, the meta verse got on
14 the stand, the \$20,000 guy, he said no one told me to review
15 the Signal. We think the government didn't review the Signal.
16 Common sense says the government reviewed the Signal on all
17 these phones and we didn't see one Signal text.

18 Common sense equals reasonable doubt, reasonable doubt
19 equals not guilty.

20 The government told you this was a secret agreement,
21 right. Tim Shea and Brian Kolfage had a secret agreement.
22 Okay. And this secret agreement was to launder money. And
23 ladies and gentlemen, how would I sit here, and like I did in
24 the beginning, ever dispute that money went from Ranch Property
25 to Freedom Daily. I didn't dispute that. I didn't dispute

M5v3she2

Summation - Mr. Meringolo

1 that. But they didn't prove beyond a reasonable doubt what
2 that was for. We submit that it was for the list. The list we
3 paid aftertax dollars for.

4 Anyone who does a business and maybe they're trying
5 to, they can use this list to formulate another business,
6 whether it be Winning Energy. The evidence will show and the
7 bank records, which we're going to go through which is in
8 evidence and we went through with the gentleman on the stand, I
9 don't know if you recall. I'll show you my -- if you remember
10 that. The evidence will show money going back and forth. Back
11 and forth.

12 So the government stayed silent on the \$183,000 that
13 went from Freedom Daily from 2018, 2019 and 2020 to the Sheas.
14 Why? That is common sense. Reasonable doubt. Why did they
15 not even address it?

16 Maybe Mr. Sobelman, now they get to go after me.
17 That's the law. They get to go after me. So address why you
18 didn't talk about Freedom Daily giving money to the Sheas.

19 I submit to you money is going back and forth, and
20 they cannot prove beyond a reasonable doubt on what it was for.
21 Just because a lawyer sits up here, and including me, ladies
22 and gentlemen, don't believe what I say. But there is no one
23 who came in to testify, there is no one who came in to testify
24 to say -- that wasn't my phone. There is no one who came in to
25 testify to say what that money was exactly for.

M5v3she2

Summation - Mr. Meringolo

1 The \$80,000 guy said, oh, this is what happens with
2 money laundering. But did he say, well, if you're giving money
3 immediately out and money is immediately coming in, everybody
4 was silent. All the money that was going back and forth. So I
5 submit to you, that alone is reasonable doubt. 190,000 going
6 from Mr. Shea to Brian Kolfage. \$183,000 going from
7 Mr. Kolfage to Shea.

8 Now, the government said that Freedom Daily was
9 defunct and they were out of business. But money was going --
10 you see it. Money was going from Freedom Daily to the Sheas.
11 I submit to you that's reasonable doubt. That's reasonable
12 doubt, ladies and gentlemen. Because no one is explaining
13 either way. The only people who are explaining what happened
14 either way are lawyers. Okay. And lawyers, we know are not --
15 we're just doing what we do. But don't take us for our word.
16 Say where in the testimony, Judge Torres, where in the
17 testimony did somebody say this is what the money was for?
18 Where in the testimony? Where in the testimony did somebody
19 say Mr. Shea told me this was what the money was for.

20 We're going to pull a text message from here and a
21 text message from here. Everybody knows that people
22 misinterpret text messages. And if you want to take a text
23 message from March 1st and add one from April 1st, you can make
24 it sound like whatever you want.

25 Just looking at the charts and plugging these things

M5v3she2

Summation - Mr. Meringolo

1 in, it is reasonable doubt.

2 So, the taxes in this case, I am going to start with
3 the taxes. Because he owes the taxes, right. But ladies and
4 gentlemen, Amanda Shea writes an e-mail says give me the 1099.
5 Right? Isn't that something that you can use your common sense
6 and say they're asking for the 1099. And then We Build the
7 Wall the accountant says, where it says it's for rent. That's
8 a thing he puts it on his income anyhow? This is what the
9 government is using against you? Use your common sense. He
10 doesn't even make his own 1099. That's what life is. The
11 company does. He gets the 1099, ladies and gentlemen, it says
12 rent. He puts it down as income. He puts it down as income.
13 He doesn't even take the 1099. And he takes these two
14 deductions, ladies and gentlemen.

15 But, before we can continue, the evidence will show --
16 where is the bank records -- the evidence will show and I want
17 everyone to say, Judge Torres, please, give me the Sheas' bank
18 records. Look at the debits, okay. Look at all the debits.
19 And we'll keep going over this throughout this summation.
20 We'll see if you look at the bank records, which, and
21 respectfully, ladies and gentlemen, I am going to need some
22 time, okay. We look at the bank records, you say, Judge
23 Torres, let me get the bank records from the Sheas in 2019. We
24 don't, I won't even bother with you 2018.

25 And you'll see United Airlines going to Texas in

M5v3she2

Summation - Mr. Meringolo

1 January. You'll see charges to a hotel in D.C. in January.
2 You'll see a rental car, you'll see debits in Florida. You'll
3 see an international flight UA -- Houston, Texas. You'll see a
4 United Airlines flight in Texas in February. You'll see
5 Southwest Airlines flight in Texas. You can go through all of
6 them. I'm only in March. And you can go through all of them.
7 You can see, you can detect -- the evidence will show that's in
8 the record, you can say I want to look at all the Sheas' bank
9 records for 12 months. What were they doing? What was Tim
10 doing? Tim was flying everywhere. And they're here to say
11 that he didn't work? So that's in evidence. That's common
12 sense. That he's going everywhere, Texas, Florida, Washington.
13 He's not going to the border for his health.

14 Whatever you believe, they built the wall. Right?
15 And the evidence will show that Tim Shea, and it shows that Tim
16 Shea was instrumental in building that wall. So you keep
17 going.

18 In June, when the invoices -- if you want to match up
19 the invoices, he is on United Airlines in June to Texas. You
20 can just ask, there's 12 jurors, each one of you take a bank
21 record and go through it, highlight it, and say here's where
22 Mr. Shea was. Okay.

23 Imagine somebody saying you didn't work when you
24 worked and the evidence is there? But I had to wait until the
25 summation, ladies and gentlemen. And I asked you in the

M5v3she2

Summation - Mr. Meringolo

1 beginning for some patience with me. I had to wait the whole
2 trial and wait to speak to you to say look at the bank records,
3 dissect where Mr. Shea has been. Okay. And that's work. Real
4 work. That's common sense. Common sense is reasonable doubt
5 and reasonable doubt is not guilty.

6 And I have all the bank records and let's just take
7 January just to show you. Because, you know what, don't
8 believe me. Don't believe me. Look at the bank records. When
9 it comes up, I'll come back.

10 Not one witness did the government bring here before
11 the indictment. Danielle was fired in 2018 by Mr. Kolfage.
12 That's what the evidence will show. The source of the money in
13 and out, they can't say for certainty why Freedom Daily was
14 paying Mr. Shea. Reasonable doubt. And why Mr. Shea was
15 paying Freedom Daily. That's reasonable doubt.

16 And you have those bank records and I did that chart
17 and we'll show it in a little bit.

18 Now just to give you an overall view, the evidence in
19 this case with respect to this contract, ladies and gentlemen,
20 the March 29 contract, a memorialization of a contract is not
21 criminal. I think the government would even have to concede if
22 you memorialize a contract, it is not criminal. Okay.

23 The evidence in this case will show that that contract
24 comes from Richard Kaye. Richard -- who is Richard Kaye? We
25 all know who Richard Kaye is. I told you, ladies and

M5v3she2

Summation - Mr. Meringolo

1 gentlemen, on my opening statement, pay attention to Richard
2 Kaye. So this guy is from Barnes & Thornburg. Right. Big
3 firm. Big firm. He's the guy where the e-mail originates
4 from. He's the guy who -- who the metadata guy says that's the
5 last time before it's sent the document was changed. So I
6 submit to you, ladies and gentlemen, that the document comes
7 from the lawyer in this case.

8 Okay. So just back to this. I digress one minute.
9 You go through all of these things. This is his debit card.
10 This is his debit card. Right. And in his debit card, it
11 shows United. Okay. And there are many, many charges here
12 that you can ask Judge Torres to ask for these bank records.
13 That's Frontier, Southwest Airlines. Here's what I said.
14 There is the hotel. So there is all these charges, I mean
15 there's -- okay.

16 Let's do in January. He hasn't been paid yet. Right.
17 These are Texas, he's in Texas. Remember, he hasn't been paid
18 yet. He didn't get paid until March.

19 Let's go back to this contract. The contract, ladies
20 and gentlemen, comes from the lawyer. And I submit to you that
21 the lawyer works for this Barnes & Thornburg. And the lawyer
22 Richard Kaye, is a partner in that law firm. And that's a huge
23 law firm. Someone like me they don't, they wouldn't even let
24 walk in the door. But it is a huge law firm and that's where
25 the e-mail originates from. And it originates from him on

M5v3she2

Summation - Mr. Meringolo

1 October 22, 2019.

2 And I submit to you, ladies and gentlemen, that this
3 e-mail and this attachment originates from Richard Kaye the
4 lawyer. The lawyer that We Build the Wall paid over \$600,000
5 to.

6 Now, if you want to get your pens out, you could say
7 this is in evidence, and these are the payments to Richard Kaye
8 and Barnes & Thornburg. Okay. \$235,000 to the lawyer and the
9 law firm on February 4. You see 75,000, 100,000, 75,000 on
10 November 2nd after that contract. I'm sure he billed for that
11 contract. And 50,000, 68,000 in July of 2020.

12 There is a stipulation that we signed and the lawyer,
13 respectfully, he didn't do anything wrong but he is a lawyer in
14 the stipulation that he's a lawyer in good standing.

15 So, it originates from the lawyer's e-mail, this
16 contract, that they are charging my client with in Count Three.
17 I submit to you, my client did nothing wrong.

18 What's further evidence that he did nothing wrong with
19 respect to that contract, the contract comes from the lawyer,
20 to Amanda, to Tim or Brian, signed, sent back. No one changes
21 a word. No one even changes a word. And then this is a text
22 message that wasn't shown to you, ladies and gentlemen. Where
23 Brian says to Tim -- I have to find it. And you know I'm
24 disorganized here. But Brian says -- and I got to thank Clara
25 and Angelica. Because without them, I wouldn't have found all

M5v3she2

Summation - Mr. Meringolo

1 this stuff. But if you guys could find that text message that
2 would be great.

3 But Brian says, in sum and substance, and I want you
4 to ask for the text message. Brian says Tim, send me the
5 contract Rich did for me. Okay? Send me the contract.

6 So the evidence is that the lawyer has the last time
7 you see this contract anywhere, the first time, is the lawyer
8 sending the contract. I submit to you, a lawyer who has made
9 this amount of money, he's not sitting here on Count Three, I
10 can tell you that much.

11 MR. ROOS: Objection, your Honor. That's legally
12 inappropriate.

13 THE COURT: The attorney is not on trial.

14 MR. MERINGOLO: The attorney is not on trial but he's
15 the one who sent the e-mail. He is the one who got paid over
16 \$600,000. You can find it in GX 100 and GX 1000 and GX 1200.

17 So, I submit to you, ladies and gentlemen, when the
18 contract is going back and forth, no one even makes a change.
19 Because what happens when a lawyer sends you a contract? You
20 sign it, you send it back. Okay? Whether it be your mortgage,
21 whether it be an e-mail list. And ladies and gentlemen, that's
22 common sense. And like we said, common sense -- find this
23 e-mail. Common sense is reasonable doubt and reasonable doubt
24 is not guilty. Okay?

25 Now the last thing with Shea, with Kaye, is just to

M5v3she2

Summation - Mr. Meringolo

1 show you that he was a partner in this Barnes & Thornburg.
2 That is his e-mail that Richard Kaye was a partner. Okay. And
3 I believe all the money went to the law firm. Not Mr. Kaye.
4 But you know from the GoFundMe gentleman who was up here,
5 Mr. Kaye was the one who was dealing with him from the
6 inception of this. So and he was paid I believe 100,000,
7 whatever he was paid in February probably for the time that he
8 worked.

9 So, Mr. Kaye was with We Build the Wall from its
10 inception to at least July 30, 2020. Okay. I believe We Build
11 the Wall was shut down when Mr. Shea was indicted.

12 Back to the taxes. And that he pays aftertax dollars
13 for that list. Aftertax dollars. To me, you know, in my
14 former life when I used to understand business. I don't
15 understand business now. I don't understand much. But usually
16 you can do what you want to do with aftertax dollars. What's
17 the value of the list? Even the GoFundMe gentleman, he
18 testified -- you say, Judge Torres, I want the testimony if
19 that list was valuable. The GoFundMe guy says the list was
20 valuable.

21 We know the list was valuable because, ladies and
22 gentlemen, that list got \$25 million, okay. \$25 million, the
23 gentleman from the GoFundMe said that was the number one
24 GoFundMe at that time in 2019 of all time.

25 So, picture you were a real businessman, whether you

M5v3she2

Summation - Mr. Meringolo

1 are doing a startup, whether you're doing an energy drink, or,
2 more importantly, ladies and gentlemen, if you were involved in
3 real estate. And you had a list of 384,000 people who donated
4 to whatever cause you believe in.

5 We may not believe in what Tim Shea believes in. We
6 may not even believe what the wall is. But just figure, take
7 yourself out, and say, 384,000 people who donated to a cause
8 that I believe. What is the value of that list? I mean, it's
9 valuable. It is actually extremely valuable, if you thought of
10 it in a Winning Energy type of scenario, that I'm going to sell
11 Winning Energy drinks with the list. You'd buy 50,000 cans
12 possibly to sell a Winning Energy drink. Right. You may do
13 that. Once they're fulfilled, and respectfully, that was a
14 loan. And there was a conflict of interest with Brian.
15 Conflict of interests are not crimes, the last I heard.

16 What happens today if Tim wrote a check and paid that
17 loan? What would happen? He would pay the loan back plus
18 interest. If you look at that loan, Tim was charged fees for
19 the loan like bank fees. Look at the loan carefully. Charged
20 fees, more fees than if you went to a bank. In 2019,
21 10 percent interest. That's what the evidence will show. I
22 submit to you that there is nothing wrong with that loan.

23 And also, ladies and gentlemen, that Winning Energy
24 has nothing to do with this case. It is not a charged crime.
25 Okay. Neither is the taxes. Okay. If you ask Judge Torres,

M5v3she2

Summation - Mr. Meringolo

1 give me the evidence on the taxes that relate to the crimes,
2 there is none. It is what's called -- it is not charged.
3 Okay. So I thought you should also know that.

4 Now the government wanted to do Ranch Property, ladies
5 and gentlemen. They put up Ranch Property took this loan,
6 right. But in the stipulation, the evidence will show, that
7 the loan's not due. As we sit here today, or the other day
8 when the stipulation, the loan's not due. Okay. We've been
9 indicted for 20 months, still the loan is not due. That's what
10 the evidence is. Okay. So, if Mr. Shea wanted to pay that
11 loan tomorrow, the loan gets paid with the interest. It is a
12 low interest because it is an SBA loan. When the SBA gives
13 their loans, they do an investigation. And the government came
14 up here with a chart, this, that, the other thing. There was
15 other moneys going in from We Build the Wall. Look at the bank
16 records, because it was no testimony on it.

17 Now, the individual, the gentleman who testified about
18 the taxes, right. He said that you are allowed to take
19 deductions, right? And we saw in Mr. Shea's tax return, there
20 were deductions for a Range Rover and cell phones. But now,
21 ladies and gentlemen, and maybe Mr. Shea, you know, rushed it.
22 He went to H&R Block, nothing wrong with H&R Block, my cousin
23 works there. Not the sharpest tool in the shed, but he works
24 there.

25 You can see all the deductions that the individual

M5v3she2

Summation - Mr. Meringolo

1 from the IRS said you can take. You can take hotels, as long
2 as it is for business, you can take airfare, you can take meals
3 if you are away. Stuff like that. And you can read his
4 testimony. And it said any -- then here is the one thing I
5 wanted to just show it to you, ladies and gentlemen. I said to
6 him, to this gentleman -- I'm very bad with names so I'm not
7 going to say his name.

8 I said: The standard deductions correct? Line 17,
9 18.

10 "A. If they choose to do so, sir.

11 "Q. Right now as we speak for the ladies and gentlemen of the
12 jury, they could amend their" -- meaning Amanda Shea and Tim
13 Shea-- "they could amend their tax returns right now if they
14 wanted to?

15 "A. They could, sir.

16 "Q. Anybody in America could amend their tax return at any
17 time, correct?

18 "A. That's correct."

19 If I was Tim after this trial, I would take all those
20 deductions that you guys are going to pull out and see. Okay.
21 Also, and this individual said that can he deduct -- okay.
22 Here is one other thing. Because don't take my word for it at
23 all. Don't take my word for it. I am going to read 14.

24 "Q. And there wasn't one deduction for taking travel, say an
25 airplane to the southern border, that wasn't one deduction for

M5v3she2

Summation - Mr. Meringolo

1 that, correct?

2 "A. I did not see that.

3 "Q. There wasn't one deduction for Mr. Shea staying at a
4 hotel, correct?

5 "A. I didn't see that, sir."

6 So you, ladies and gentlemen, when you ask Judge
7 Torres for a printout of all the bank records, maybe we are not
8 accountants, I'm certainly -- I can't add two plus two. But,
9 you'll see they're all deductions he could have taken that he
10 didn't take.

11 And I'm not blaming the H&R Block guy. I am saying
12 maybe he was rushing things, maybe he was trying to get his
13 taxes in. He took all the income, he said forget about
14 deductions. Let me take my car.

15 Anyone who has their own business, which, you know,
16 most -- people do and don't. You know there are these
17 deductions, right. And I said, if there are any deductions
18 that he missed, he could amend his taxes tonight, right? And I
19 knew that was in the records when I asked that question, ladies
20 and gentlemen.

21 And I submit to you, all this stuff with the taxes in
22 and out. You know, you guys are better than me. You'll use
23 your common sense, you'll use your common sense when you look
24 at those bank records.

25 So he took his gross income to get the taxes in. I

M5v3she2

Summation - Mr. Meringolo

1 don't know if there was an extension until October. The
2 evidence is not here. I don't know one way or another. Maybe
3 he failed to file it in March and he just wanted to get it in.

4 But if you also look at the tax records, it shows that
5 he did the tax return I believe in August right before he was
6 indicted. I have it right here the e-signature. And if you
7 can read it, it is 8/18/20 and he was indicted and the
8 stipulation will show 8/20.

9 Also, if you recall when the gentleman was on the
10 stand I asked him, do people normally get indicted when they
11 amend their returns after they have been indicted? They're
12 indicted now like Mr. Shea. And let's find that. Because that
13 was a -- I said when they're indicted like Mr. Shea, is it
14 normal for people -- and ask for this testimony -- is it normal
15 for people to amend? And he says sometimes they do, sometimes
16 they don't. I says, if you recall, well, when you are under
17 indictment in a federal case, and you amend, isn't it true
18 sometimes people get indicted for the taxes? And he said yes.

19 So, I'm pretty much done with the tax guy. And you
20 use your common sense, ladies and gentlemen. And I submit to
21 you, ladies and gentlemen, he used aftertax dollars, aftertax
22 dollars. You can do -- in this country, you can do what -- I
23 think in this country you can do whatever you want with
24 aftertax dollars.

25 I have current former students, and one student told

M5v3she2

Summation - Mr. Meringolo

1 me to buy Bitcoin five years ago. And I said you're crazy,
2 which I still think he was crazy. That would have been a good
3 thing, right. But we don't know what value is, this is a
4 person, the individual, what the individual thinks Bitcoin may
5 be worth money. What an individual thinks a list may be good
6 to sell cans or real estate or something or anything.

7 Who are we to get in anybody's mind and who are we to
8 tell anybody what to do with aftertax dollars? I submit to
9 you, that's reasonable doubt.

10 Okay. So, RPMM. They say it was a shell company. A
11 shell company just to move money. The only reason was to move
12 money to Brian Kolfage that's what the government was saying
13 for two hours this morning.

14 I submit to you, ladies and gentlemen, and the
15 government knew it wasn't a shell company. It was a single
16 member LLC. And you can look at the individual, the gentleman,
17 I think it was the \$80,000 guy. And he said that people do
18 single member LLCs all the time.

19 So now I want you to use your common sense, again,
20 okay. Let's use your common sense. Why would Tim Shea open a
21 company in Wyoming, that he don't want anybody to be -- to
22 detect that he's the owner? Okay. Why would he do that?
23 Three months after We Build the Wall. Common sense says, and
24 I'm just going to talk to you straight. You're building the
25 border wall, right. We say whether we agree with it or not,

M5v3she2

Summation - Mr. Meringolo

1 for this practical purposes irrelevant. Okay. He's building
2 the border wall.

3 We all have life experiences. Good, bad, different,
4 right or left. The political climate of building a border wall
5 with personal funds, would you -- if you take yourself out of
6 whatever you believe in and put yourself in another man's
7 shoes, would you want anyone to know where you lived?

8 I submit to you, common sense would say I don't want
9 anybody to know where I live anyhow. But if I'm building a
10 border wall, I certainly don't want anyone to know. Common
11 sense equals reasonable doubt. Reasonable doubt equals not
12 guilty.

13 If you're building a wall, and he was working. Right.
14 You see he's going there, and as Judge Torres told you before
15 we began, she gave you the analogy that if it's raining
16 outside, and you didn't see, the windows were -- I am not doing
17 a good job. If the windows were closed and it was raining
18 outside and somebody came in with a wet umbrella you could say
19 it was raining. Okay. That's a fair assumption that Judge
20 Torres told you.

21 So, if you're building a border wall and you're
22 working, do you want people to know? One, that's common sense
23 you don't. Number two, do you want personal liability? Or do
24 you want to open an LLC, a Inc., or whatever they call it. Any
25 of these, I don't know whatever corporation to have protection,

M5v3she2

Summation - Mr. Meringolo

1 and he says we're going to cloak and veil. He don't know
2 what -- read that. Read that. That's what he said and the
3 government says, oh, it's cloaking and veil.

4 Who wants personal liability in this life that's going
5 to do business? Right? He's building the southern border
6 wall. And the evidence, that analogy that I gave you that
7 Judge Torres gave you, he's sending and we're going to get to
8 it. He's trying to get land. The border wall is completed.
9 Okay. So it's like he's trying to get land. It didn't just
10 happen. That's common sense.

11 Tim Shea is on the front lines, ladies and gentlemen,
12 that's what the evidence shows, sending e-mails out to get
13 land, a ranch owner on the southern border and the wall is
14 built.

15 And us New Yorkers, we know, and when a wall is built
16 like that, you can see how big that is. You can watch that
17 video, which I apologize it was much better on the computer and
18 I know it was all crazy. But watch the video in the room and
19 with the sound and everything.

20 But, you go from taking a whole section in the middle
21 of nowhere, and building a border wall. And what happens when
22 you build a wall. We know, we're New Yorkers, you got to get a
23 architect, you got to get concrete, you got to get steel, you
24 got to get men and women. To build a border wall like that is
25 a monumental feat. This wasn't the government. And

M5v3she2

Summation - Mr. Meringolo

1 respectfully to Mr. Brian Kolfage who -- whatever you say about
2 him here, he is a hero. The guy lost his legs and his arm and
3 had his other arm sewed back. He wasn't down at the border
4 helping him build the wall. He wasn't. Tim Shea, that's what
5 the evidence is here. Tim Shea.

6 So, I asked the \$80,000 guy, and I know I just said
7 that, but don't believe me. I said, privacy reasons, could be
8 security reasons as well for their personal well being. He
9 says yes. This is with respect to the corporation.

10 Certainly it's not a crime to want to hide your
11 residence, is it, right? I don't speak correctly sometimes.
12 It is not a crime to hide. No, it is not.

13 So I believe if you use your common sense, whether you
14 believe it or not, if you were building a border wall, you
15 would not want your name out there and you would want to
16 protect yourself from civil liability. Because if you don't
17 get the right architect, and the concrete is not laid right,
18 and the steel isn't put up correctly, and somebody gets hurt,
19 you are going to go to jail.

20 Like I said the first time I spoke to you, ladies and
21 gentlemen, I read the text message in the beginning of that
22 text message Mr. Shea says I need Spanish speaking people
23 because the people -- he doesn't speak Spanish, and he needs
24 Spanish speaking people to try to get the land. Let's think of
25 that and think of Judge Torres' analogy.

M5v3she2

Summation - Mr. Meringolo

1 Now there were invoices, right. There were invoices
2 from Ranch Property. So match those invoices up to the
3 payments. The government is sitting here saying because he
4 marked an invoice up, that's evidence of money laundering.

5 I submit to you, ladies and gentlemen, use your common
6 sense. Common sense is reasonable doubt. Reasonable doubt is
7 not guilty.

8 Tim Shea never said he was working for free. I didn't
9 see any text message for that. Tim Shea is not on the board.
10 That's what the evidence shows. You know what you do? You
11 match up those invoices with when he's going around. Right.
12 Like the money laundering guy said, and I believe it was the
13 government's questions that says if you 1099 the gentleman,
14 meaning Tim Shea, would pay for his own expenses, we have all
15 those expenses in the bank records, okay. So why not, why not
16 mark it up.

17 The guy got \$80,000. We all were sitting here saying
18 we are in the wrong business if that guy got \$80,000 to just
19 come up here for 30 minutes. So Tim Shea can't make money?
20 It's money laundering?

21 Also, ladies and gentlemen, you can look at the bank
22 records here too. These are other law firms that got paid from
23 We Build the Wall. Major law firms, Quinn Emanuel, the other
24 law firm. That other guy is probably a guy.

25 So you can see those things, GX 100, GX 12 and GX 16.

M5v3she2

Summation - Mr. Meringolo

1 Please don't take my word for it at all.

2 Now, Kobach, right. That was the stipulation that he
3 said and government put that up and I stipulated to that,
4 ladies and gentlemen. I stipulated to that, too. Mr. Kobach
5 did not know anyone was getting paid. He's general counsel,
6 this guy. He's not on the front lines. He's in that video
7 doing the nice things. He is the former -- what's he the
8 former of? He's former secretary of state of Kansas.
9 Politician. He was the lawyer for We Build the Wall.

10 But in that stipulation, which the government has, you
11 know me. It says that he knows Tim Shea did security. And Tim
12 Shea did do security, too. He did security at the border.
13 Now, ladies and gentlemen, when -- common sense real life
14 experience, the border is one of the most dangerous -- whether
15 you like it or not, it is one of the most dangerous places on
16 earth. Whatever you think, that's the truth. It is what it
17 is.

18 So Mr. Kobach he's the lawyer and he's involved since
19 the inception of the charity. He agrees that Tim did security.
20 Because he's the one, the politician who is doing the video so
21 he would know, oh, and read that stipulation. Don't even take
22 my word for it. So he is the lawyer.

23 Now let's go, you have the bank records, GX 1600. And
24 this is Mr. Kobach. Kris Kobach, he is a lawyer. I am not
25 saying anybody shouldn't make money. Right. That's none of my

M5v3she2

Summation - Mr. Meringolo

1 business. But, these are the payments that Mr. Kobach was
2 getting paid. 37,000 in February. 26,000 in April. 25,000 in
3 may. GX 1600 and GX 12. Tell the judge print this out and I
4 want to see if this lawyer is telling me the truth. 473, he
5 probably put in an expense. 28,000, May, 25,000 in May.
6 25,000, 26, 25, 26, 25, 26, 25, 50. A month before the
7 indictment is here. So this is Kris Kobach. General counsel.
8 I'm not saying he shouldn't have got paid that money. I don't
9 know what he did. But I'm not saying -- that's the evidence.
10 This is the evidence. We are not saying he shouldn't have got
11 paid. When you work, you get paid.

12 And in this case, the only one who was doing multiple
13 jobs, like if you had a startup company, anyone who knows that
14 you are doing a 100 jobs so they needed security. Tim is doing
15 security. They wanted a drone, Tim's doing the drone. They
16 wanted land, Tim's doing land.

17 So here is another thing that I want you to use your
18 common sense, ladies and gentlemen and why you should vote not
19 guilty. Look at the Sheas' bank accounts. The only income is
20 from We Build the Wall for Tim Shea. Tim Shea's 51 years old
21 as he sits here today. If you look at all his e-mails, this is
22 in evidence. Look at all the signature pages and e-mails. It
23 says -- and it is Tim@realestate. Okay. And he says Tim is
24 affiliated with real estate. So there is no income. Okay. No
25 income, basically, from anywhere else. Maybe there is 5,000.

M5v3she2

Summation - Mr. Meringolo

1 So, but I want you to go through the records, the Sheas'
2 records very important.

3 So, he's doing what needs to be done here, to help --
4 and he didn't do it himself. You needed contractors, you
5 needed cement guys, steel guys, I'm not here saying those
6 people didn't work. That's real work. Not something like I am
7 doing, sitting up here and talking. That's real work. Okay.
8 So, but Tim was the one who gets the land. Tim is providing
9 the security at the border. Tim got paid. And Tim got paid
10 well and Tim did what he wanted with his money.

11 You want to pull text messages out of here and there.
12 I submit to you, ladies and gentlemen, pull the whole, pull the
13 whole transcript, text messages, and go one by one and see how
14 the text messages they weave into these charts. That's what I
15 think we should do. Right. You want to get to the bottom of
16 this. Not just one text message here, one text message there.
17 Thank you for bearing with me.

18 If you look at the text messages about who is getting
19 paid, right. What the government did here is they have a text
20 message with Andy Badolato and Brian Kolfage. And it is not
21 nice what Tim's friends did to him. But still, but if you look
22 at the text message, Andy Badolato and Brian Kolfage, they say
23 I want 100 grand, I want 20 grand a month. Tim's not on those
24 text messages. But they put that text message right here.
25 Kolfage says I want 100 grand. I want 20 grand a month. And

M5v3she2

Summation - Mr. Meringolo

1 then the next text message is something about Tim a month
2 later.

3 Just so you guys know, and I know you know the case
4 and I apologize for not being so succinct. But if I come
5 across something, I want you guys really to know, this is the
6 metadata guy. And he says I don't have a perfect recall.
7 There was on the order of 30, maybe 40 total devices.

8 So, don't take my word for it that I said 30, 40
9 devices. That's how many devices they had that they were
10 looking at.

11 In addition to that, they said -- I said were there
12 computers? Whose computers did you review. And he reviewed
13 Mr. Kolfage. I can tell you, ladies and gentlemen, if that
14 contract was on Mr. Kolfage's computer, they would be up and
15 center jumping up and down. But it comes from the lawyer
16 Richard Kaye who was paid over \$600.000.

17 Okay. I don't know if you guys recall this. And we
18 talked about this earlier. This is the chart that I did with
19 that gentleman. Okay. Now, why did I go back to 2018 when we
20 did this chart? Because to show the relationship that they
21 had. And you know what's reasonable doubt, ladies and
22 gentlemen? That the government just got up here and told you,
23 basically, it was one way again. And that Freedom Daily went
24 out of business. But if you just look at the transactions,
25 look at the transactions. And ask yourself why is money going

M5v3she2

Summation - Mr. Meringolo

1 both ways? And I submit to you when you say why, that's
2 reasonable doubt. And reasonable doubt is not guilty.

3 When you look at here, here, here's when supposedly
4 this conspiracy started. With Shea and Kolfage. I submit to
5 you Shea and Kolfage the answer is reasonable doubt. Shea and
6 Kolfage the answer is not guilty.

7 Now, Kolfage was dealing with Bannon. I don't believe
8 maybe on a chain e-mail Tim was on with this guy Bannon once.
9 But Kolfage you can see Badolato, like the government just
10 said, Badolato, Bannon, and those characters. While Tim Shea
11 is at the border according to the bank records that's in
12 evidence.

13 So you see, here we go January, we go March, we go
14 June, June is a big payment. July is a big payment. Right?
15 This is in the heart of what the government, ladies and
16 gentlemen, is saying the heart of the money laundering
17 conspiracy. Okay? And I read that e-mail differently. When
18 he's talking about lists. But you read it how you feel.
19 That's all that governs here is how you guys feel. Not us.
20 Then we have September, which is -- we have September, we have
21 August, we have -- why did I do 2020. Right, August 2020 it's
22 going back from -- now remember, ladies and gentlemen. This is
23 from Kolfage Freedom Daily, to Tim. This is reasonable doubt
24 right here. One, they didn't put it in. Two, no one could
25 explain either way. We are going to pull text messages out and

M5v3she2

Summation - Mr. Meringolo

1 interpret text messages? We know what goes on when you
2 interpret text messages.

3 So during this period of time, you have \$187,000 going
4 from Kolfage to Tim. And during the other period of time you
5 have 190,000 going from Tim to Kolfage. But it can only be
6 money laundering one way. But I thought Freedom Daily was out
7 of business they just said. So this honestly, Exhibit 1. We
8 only have like 10 exhibits and the video, but this is the
9 critical piece of evidence on why we're not guilty of money
10 laundering and wire fraud. And you know why? Because it's
11 common sense. No one could explain it. No evidence in this
12 courtroom truly explained why the money was going both ways.
13 And when we say Tim Shea was working for a single member LLC,
14 he can -- the money laundering, the \$80,000 guy he said you can
15 do with your money whatever you want.

16 I'm not going to belabor you guys with these dates of
17 these charts, but you all can go through it, match up the
18 invoices. And it is okay for somebody to make money.

19 We saw what happened here, right. So, I'm going to
20 put this over here or else we're going to lose it.

21 We did talk about Winning Energy, so I'm just going
22 to -- if I have a point or two that I didn't say. Oh. Here's
23 common sense, equals reasonable doubt, equals not guilty.
24 Winning Energy. I'll get back to that. I don't want to --
25 Winning Energy. They take a loan. Right. This is a big money

M5v3she2

Summation - Mr. Meringolo

1 laundering scheme. Stipulation, the government read Kris
2 Kobach, the guy who made 3, 400,000, that lawyer, that guy. I
3 didn't know what was going on. That's okay. That's fine.

4 If this was such a big money laundering scheme, ladies
5 and gentlemen, use your common sense. Why are we taking a
6 loan? Why aren't we sending a fake invoice. Hey, let's send a
7 fake invoice. They want to say it's a fake loan. Why don't we
8 send a fake invoice so I don't owe the money back. We are in a
9 scheme together. In addition to that, if you look, it is in
10 the middle of the pandemic, the middle of the pandemic, the
11 beginning of the pandemic. He takes a loan. If he pays it
12 back, nothing happens. But he takes the loan, ladies and
13 gentlemen, memorializes the loan. Why not just take a salary,
14 send an invoice, send an invoice from Winning Energy? I don't
15 have to pay the money back. Let me get the cans, hang out.
16 That's common sense. That equals reasonable doubt. And that's
17 not guilty.

18 And then what does he do with the money. They make
19 this big deal about this. He pays -- he doesn't go to the
20 Bahamas. There is a couple of Door Dash things, you saw that
21 the guy eats, but Tim is not going -- they put evidence Bannon
22 is hanging out in a hotel over here \$10,000. What's this guy
23 doing. We are at the southern border. We're working.

24 So if you really want to look at their chart, which I
25 won't -- I'll just go like that. And look at the e-mail. This

M5v3she2

Summation - Mr. Meringolo

1 isn't even in the case. But if this there is such a criminal
2 conspiracy. Right. If there is such a criminal conspiracy,
3 common sense says don't give me a loan. Here is an invoice.
4 Here is an invoice, pay me, I'll kickback the money to you,
5 like the government is saying.

6 The only people who are saying it, ladies and
7 gentlemen, and this is reasonable doubt, whether you like it or
8 not, it's reasonable doubt. The only people that are saying it
9 is this table. The people who created the charts. The people
10 who put the text messages together. And there is nothing wrong
11 with that, but it is just reasonable doubt. So I'm done with
12 Winning Energy.

13 Oh. 3,000 donors in New York. Right? 3,000 donors
14 in New York. Why don't we just give them a MetroCard. We are
15 flying people from all over the country. Just a little common
16 sense. 384,000 donors, ladies and gentlemen. Winding down.
17 So, if you want -- it's in evidence and you'll see it.

18 The proposal for the drones. Now the government is
19 saying that the drones -- oh, I don't know what they are
20 saying. This is a fugazi. If you look at 627A, this is them
21 after the subpoena memorializing everything. There is nothing
22 wrong with that. You get a subpoena from the government, and
23 you get everything together and you give it to them. If you
24 didn't give them documents, all hell would break loose. So
25 they formalize agreements and send it to them. Now, and Rich

M5v3she2

Summation - Mr. Meringolo

1 Kaye formalized agreements, the lawyer.

2 So here's a proposal. Now remember, \$5,000 a day for
3 the drone. This is not -- well, if it was in Manhattan
4 probably would be more. But this is in the middle of nowhere.
5 This is the southern border that they are trying to do. If we
6 could for one minute, ladies and gentlemen, just when we say in
7 the middle of nowhere. This is really in the middle of
8 nowhere. It is so dangerous there.

9 Then there is an e-mail back and forth with a group, a
10 former military group for security. So you see that Tim is
11 trying to get a former military group to help out with these
12 events and stuff like that. And yeah, they cost more money
13 because they're former military. With events like this, it is
14 highly charged. Okay. I'll go through the security work a
15 little bit that Tim was doing.

16 Anybody knows, this project, it's similar to like a
17 startup. They want to build a border wall on the southern
18 border. And when you do a startup, those of us have done it,
19 most of us fail. You got to wear a lot of hats when you do a
20 startup. And Tim was wearing a lot of hats, and there is
21 nothing wrong with working hard. There is nothing wrong with
22 working hard.

23 So Charlie Ford, he is a pretty famous guy in this
24 security-type industry. He writes Tim an e-mail. And it is
25 about the event in El Paso. Okay. This is the final invoice

M5v3she2

Summation - Mr. Meringolo

1 for the telethon event near El Paso from 6/23 to 6/27. We were
2 spot on with the quote. We ran four advisors. But the final
3 total went up a little with the addition of extra bodies so we
4 can handle SB's EP. That's Steve Bannon getting executive
5 protection. That's what that means. Aside from that curve
6 ball, we stayed within the original budget parameters which I'm
7 very happy about. then they thank Tim because this is to Tim.
8 Thank you again for keeping us in mind for all your needs. We
9 really enjoy working with you. Whatever. Whatever they're
10 saying.

11 But this is Tim doing work. Getting executive
12 protection, which are probably armed people. Very
13 sophisticated. Potentially SEALS or some type of military.
14 You can read this. This is July of 2019.

15 You know what, ladies and gentlemen? The government
16 came here and in the beginning they said this is a shell
17 company, and I don't want you to quote me, but I think they
18 said he didn't work. I said, ladies and gentlemen, if this is
19 not a shell company, because that's the representations.
20 Remember I had the piece of paper, I said I could have objected
21 but I didn't. It's very inflammatory. I said I wanted them to
22 say it. I wanted them to say it because I know Tim worked. If
23 Tim worked, that wasn't a shell company. That's reasonable
24 doubt. That's not guilty. I'm moving along.

25 Now, this one, I believe Tim told me they didn't get

M5v3she2

Summation - Mr. Meringolo

1 this contract with GAS. And they wanted to get this security
2 contract because these are the guys who actually, you know, the
3 private guys who went into Benghazi, but they didn't get this
4 contract so there wouldn't be an invoice, but it shows Tim is
5 trying. Tim is working.

6 Then here is the other invoice for \$61,000. You guys
7 can read this and you guys can match it up. Did Tim add some
8 money for his work and his travel and what he's doing? I hope
9 he did. I don't know for sure, but I hope he did.

10 So I submit to you, the government's position in this
11 whole thing, this money laundering, this wire fraud, this
12 kickback scheme. Kickback schemes go one way. We're New
13 Yorkers. Right. We want to kick back, it goes one way. It
14 doesn't go both ways. That's, we use our common sense. We are
15 New Yorkers. When you're getting a kickback, it only goes one
16 way. You don't have to be a genius to know that. That's just
17 common sense. Real life experience.

18 I got two more things. I really apologize. But it's
19 necessary.

20 Whatever I'm missing is my fault. I can tell you that
21 much. If I didn't say it, the veiled that Tim writes, personal
22 protection. When Tim is cursing, right, I mean maybe some of
23 us curse, some don't. We need an F'ing plan. We need a plan.
24 If we're going to build a wall at the border, and I can tell
25 you this much. Steve Bannon didn't have anything to do with

M5v3she2

Summation - Mr. Meringolo

1 building the border wall. He was there with his executive
2 protection like it said in that e-mail. Okay.

3 So, let's just take a look at the border wall
4 completed. You guys have the video. I'm not going to waste
5 your time with the video but I want you to look at the video.
6 Hopefully you can hear what was going on. You can see what's
7 going on. If you look at that wall. This is just a picture.
8 But that is an amazing feat to do of construction for private
9 people. Right. This protects the communities, this protects
10 the border patrol, and this protects human trafficking. And
11 the goal of We Build the Wall was to do these little walls in
12 places that didn't -- at that time the government didn't want
13 to do. That was the goal of this. Okay. And they did two
14 walls. They didn't do one, they did two walls, and this is one
15 of the walls they did. And you can see there's lights, there's
16 steel, I mean that's an incline. Any of us know construction,
17 an incline in the middle of nowhere on a cliff is extremely
18 difficult. You'll see they gutted that whole piece. They
19 actually excavated the whole, that whole piece.

20 And Tim didn't do everything. But Tim was part of
21 that team to do it. So whatever you think, he's part of doing
22 something like a marvel type of construction. I can tell you
23 that first hand. Whether I agree or not, it is a marvel type
24 construction.

25 Best witness here, best witness in this case, right,

M5v3she2

Summation - Mr. Meringolo

1 was the guy from Arizona. You know, and the lady but she was a
2 little, she lost her husband, she was very upset and I
3 shouldn't. But the gentleman, the military guy, 20 years in
4 the military. The guy from Arizona. He wasn't at the border,
5 but he was up and he donated to the wall. He donated and it
6 was his understanding that the walls were going to be built.

7 Now I say, now there came a time that you've learned
8 that actually, built portions, small portions of the wall on
9 the southern border. He says I saw some of that information.
10 So that's his testimony. So it is not just some defense lawyer
11 showing you some picture. And then, let's go through this.
12 this is important. This guy is important.

13 I say on page 310-13: "Okay. And what you followed
14 and the wall that was built, were you happy with that portion
15 of wall?

16 "A. It was interesting, satisfying I guess, that some of the
17 money was used as advertised. Okay."

18 Here is the critical piece of evidence in this case,
19 ladies and gentlemen. While you are going to use your common
20 sense why it is reasonable doubt, and why it's not guilty. And
21 it is their witness, the gentleman from Arizona instead of
22 giving someone a token or a MetroCard from New York.

23 "Q. Were you opposed to We Build the Wall's hiring a
24 contractor in order to get that land?

25 "A. No.

M5v3she2

Summation - Mr. Meringolo

1 "Q. It would be perfectly okay if they paid somebody to go out
2 and search for private land, right, to buy?

3 "A. I assume that may be part of the process, yes.

4 "Q. Okay. And you're certainly okay if they paid for
5 construction work, right?

6 "A. Yes.

7 "Q. And we expected them to pay the guys who were doing the
8 construction, right?

9 "A. Right.

10 "Q. And we expected them to pay for the steel that they got,
11 right?

12 "A. Yes.

13 "Q. And you know that We Build the Wall, they did other
14 fundraisers to get more money. Are you aware of that?

15 "A. Yes, vaguely, not particularly."

16 So this gentleman, okay. Let's read this.

17 "Q. Say a fundraising event, would you be opposed if We Build
18 the Wall paid security officers' salary for the day?

19 "A. No.

20 "Q. Would you be opposed for someone who was an intermediary
21 with the security to get paid, to hire the security, would you
22 be opposed to that person getting paid?

23 "A. No."

24 Then just to verify.

25 "Q. And then with you when you donated, you get various

M5v3she2

Summation - Mr. Meringolo

1 e-mails for things?

2 "A. Yes."

3 That verifies that the donors' e-mails were given to
4 We Build the Wall, GoFundMe and We Build the Wall, Brian
5 Kolfage who was the president, owned, he owned -- you guys do
6 your own, he had access to it. I believe the GoFundMe guy says
7 there are charities that own it, but you can look that
8 testimony up.

9 So, Mr. Ward had no problem, no problem with anyone
10 getting paid as a contractor. He had no problem paying the
11 security. He had no problem paying the person who facilitated
12 the security. He had no problem paying someone to get the
13 land. He had no problem.

14 So, there are a few things I'd like to present to you.
15 So, this is Brian texting Tim. Okay. Now we know from what's
16 in evidence with us, Tim sent, wrote a letter, remember I read
17 it to you on Thursday, I read a long letter to you guys on what
18 Tim was proposing to send the people who own the properties.
19 That was on March 27, 2019. And we know that the wall was
20 done, Mr. Ward confirmed it. So you don't think I'm crazy
21 showing you a picture and you'll see the video that it was
22 being done.

23 So I believe the government put this in. He said good
24 job Tim. I heard your new company found a bunch of land for
25 us. And then they say Ranch Property Management. They laugh

M5v3she2

Summation - Mr. Meringolo

1 good job.

2 I submit to you, Tim finds land, and the government
3 puts those e-mails in as if this is a big scheme. Why can't
4 another guy say good job. Good job. What's wrong with that?
5 That's the evidence in the case here. There is nothing wrong
6 with that. And then here you read, please read these. If you
7 can, if you can. I am not trying to waste your time.

8 This is in 2018. This is Tim Shea saying, so use
9 private contractors to build and fund with the GoFundMe like a
10 construction loan. Now, there is no loan. There is no
11 nothing. Tim is saying let's get private contractors, but he's
12 not -- he is a real estate guy. He is not that sophisticated
13 to say construction loan. It sounds -- but it is the money
14 they are going to use to build the wall. And Tim is saying, we
15 got to get contractors to build the wall. Right. We don't got
16 to get Brian Kolfrage to build the wall. Tim's not going to
17 build it himself. Anybody who has anything to do with
18 materials or anything with construction, it is a -- it's tough.
19 I'm telling you it's tough.

20 And now the government also said the website, right.
21 The splash page and probably everybody knows, but the young
22 people probably know better. They say they want it as a
23 presence. We want the splash page as a presence. So Tim is
24 sending out e-mails to landowners to try to get their land,
25 they call them ranchers, to try to get their land to build on

M5v3she2

Summation - Mr. Meringolo

1 the southern border. They put up a splash page. There is
2 nothing wrong with that for a presence. To show we exist.
3 Because if you send somebody a letter, we want to come on your
4 property at the southern border and we are going to build on it
5 for free, people may throw it out. Most people probably did.
6 And somebody may well say, let me see who are these people and
7 they have a presence. There is nothing wrong with having a
8 presence in business.

9 This is what the government -- have you seen the
10 website? Then Tim says yeah, but I did it from the desktop.
11 Amanda made the logo. So, these are social media, at the end
12 of the day, these are social media people. They were doing
13 social media with Freedom Daily. Freedom Daily did not go out
14 of business when the government said because you saw the money
15 back and forth. This is what they did. So whatever Bannon and
16 all these other guys were doing, it is what it is. But what
17 Tim is doing is why we're here.

18 It is like your parents or you tell your kids, I don't
19 care what the other people are doing, I only care what you guys
20 are doing.

21 And here is the thing. Right. Here it is. This is
22 what Tim's doing. So Tim, I think this is the day or within a
23 day or two that Ranch Property gets incorporated. Right.
24 That's in one of their charts. So I want to give you the
25 e-mail from the day that Ranch Property gets incorporated. So

M5v3she2

Summation - Mr. Meringolo

1 this is March 29, 2019. Read this over. Let me know if there
2 are any changes to be made. So, this is coming from Tim at
3 Ranch Property.

4 So, I think it's very important, this thing, this
5 piece of evidence. Because this is showing what Tim wants to
6 do. This is him taking initiative on trying to get the land
7 for the project. Right. You don't see Steve Bannon coming
8 here writing a letter. You don't see Steve Bannon going to the
9 border wall but for having executive protection. We see the
10 working guy doing it. He's working. You can read it. And he
11 says exciting opportunity. He talks about, listen, it is his
12 friend, the triple amputee, it's his friend. We are not going
13 to say we're not friends. But it is a different relationship.

14 Here, here's what common sense reasonable doubt is.
15 Not guilty, and I just thought of this. You see any money
16 going from Freedom Daily to COAR. I don't know the answer
17 because I didn't even look at that. I just thought of that
18 right now. You see any money going from Freedom Daily, Brian's
19 company, back to COAR, Bannon's company. I submit to you that
20 there is no money. And I submit to you that would be
21 reasonable doubt. And I submit to you that's not guilty. But
22 do you see money going from Freedom Daily to Tim Shea, Tim Shea
23 to Freedom? Yes, you do. We're not hiding behind that.

24 But this letter is -- you know, I'm not going to read
25 it to you guys again. Because I am up here long enough as it

M5v3she2

Summation - Mr. Meringolo

1 is. But, this is the longest time I've ever done on any of
2 these, and it's been two-and-a-half years so I'm probably very
3 rusty.

4 He has a 1-800 number and you just read it. And this
5 is what he's doing. This is what he's doing. The worst thing
6 in the world is somebody, when you're working and somebody says
7 you are not working hard. You are not working at all. Okay.

8 So now, let's go through another exhibit. And ladies
9 and gentlemen, I'm closing in on. This is in 2020.
10 January 22, 2020. This is Tim to Amanda. They're talking,
11 this is what they're talking about. Right. This is an invoice
12 for 5,800. Maybe if the bank records are there and I don't
13 know if we even went this far. Did we go this far? Maybe we
14 went this far. I didn't think we went that far with the bank
15 records and the expenses. But, here is what Tim is sending
16 them an invoice. Marketing towards new wall building locations
17 in Mission, Texas and the Rio Grande Valley, Texas. Utilize
18 Facebook ads, utilize Google ads, pull info on landowners,
19 track locations and cold calls.

20 That's what Tim is doing. You probably, everybody
21 would know this better than me, but when you are in real
22 estate, you understand how to do that. You pull landowners,
23 the site. You pull up and see who is there and you cold call
24 them. Sir or ma'am, would you like me to build a wall on your
25 property. Not everybody -- people will hang up on you. It is

M5v3she2

Summation - Mr. Meringolo

1 just like anything else. They set up meetings.

2 I'm telling you, this is where I say common sense and
3 why it's reasonable doubt, why it's not guilty. So if you are
4 looking to meet people in Mission, Texas, and Rio Grande, and
5 you're setting up the meetings, you are going to having to go
6 there, okay. We know Bannon didn't go. If you are going to
7 get the properties in Mission, Texas, and the Rio Grande
8 Valley, Tim's saying, I mean, use your common sense. All
9 right. Almost done.

10 In the beginning, sometimes you get confused up here.
11 But it's not like laying concrete, I can tell you. Actually I
12 can tell you.

13 In the beginning I asked you, I asked you, please, to
14 be patient to the end. Well, here's Gordon -- this is the
15 GoFundMe guy? Would there be value in a list of donors, is
16 that fair to say? Yes, generally donor lists have value.

17 There is no evidence of anybody else selling a donor
18 list. Right. The only evidence is the contract of selling the
19 donor list to Tim Shea. That's the only evidence. Everybody
20 knows that has value. And in social media circles -- I'm not
21 even on it so I have no idea, but if you are a social media
22 person, you know these things have value. Big value. The
23 largest accumulation of a GoFundMe in the GoFundMe history at
24 this time.

25 So, we know Brian Kolfage is the owner, owns the list.

M5v3she2

Summation - Mr. Meringolo

1 There is no evidence whatsoever, ladies and gentlemen, of him
2 selling that list.

3 Listen, Brian's an opportunist. It is what it is,
4 right. It is what it is. Hero. Massive hero, I mean
5 unbelievable. You wouldn't want to be that he guy. But there
6 is no evidence that that list is sold except to Tim Shea. And
7 it has value. I mean, that's what we are trying to say here.
8 That's reasonable doubt. It has value. But, Tim's represented
9 by counsel, so he was told not to file his taxes like we said.
10 Tim's represented by counsel here right now, ladies and
11 gentlemen. And I'm here up here, you know, potentially make a
12 fool out of myself.

13 But, what's in the bank records, and what the
14 government hasn't showed you, ladies and gentlemen, is what I
15 asked you to really be patient for. Because ladies and
16 gentlemen, in the summer of 2020, the bank called Tim Shea.
17 Unsolicited, maybe he's on his cell phone driving on the
18 highway. And they ask him questions. And I'm going to go
19 through those questions and answers right now and then I am
20 going to conclude. And the government can come up here, but
21 this is in evidence. This is GX 2000.

22 And you think if they thought this was important, and
23 it was good for them, they would have put it up, right, they
24 would have brought it up. They are bringing up everything.
25 And truth be told, I didn't find this. Clara and Angelica

M5v3she2

Summation - Mr. Meringolo

1 found this. There is no way on earth I would have ever found
2 this.

3 So on 6/15, Mr. Jordan Hill calls Timothy Shea. And
4 they calling about all these transactions. This is the end,
5 right, 2020. Government doesn't have -- I believe they don't
6 have anything on their chart in 2020. Right. Let's go through
7 this.

8 What's your relationship to We Build the Wall? He's
9 driving down the highway on the phone. What type of business
10 is it, why did you send wires? Why did they come from three
11 different accounts? Who owns the business? Please be as
12 detailed as possible.

13 Answer: His wife works for We Build the Wall. And is
14 a founder of the business. The business is in support of
15 building the wall. Her payroll was through wires up until this
16 month. Now they use paper checks. The owner of the business
17 name is Brian Koosage.

18 So, tell me, tell me the evidence in that thing. Is
19 anything wrong with that? You guys can verify that as truth.
20 Right? Every answer in that you can verify as truth.

21 What is your relationship with Brian Freedom Daily?
22 What is the purpose of sending checks to them? What type of
23 business is Freedom Daily? What is Brian's relationship to the
24 business? Please be as detailed as possible.

25 Now, ladies and gentlemen, if you want to ask Tim what

M5v3she2

Summation - Mr. Meringolo

1 he was doing, here it is, buried in the bank accounts GX 2000.
2 GX 2000. Just ask Judge Torres. She'll give it to you if you
3 don't believe this.

4 Brian is the owner of We Build the Wall. They're
5 going to dispute that, ladies and gentlemen? No. And Freedom
6 Daily. Was -- was Timothy paying Brian for an e-mail list.
7 Freedom Daily is an e-mail newsletter. Brian is the owner of
8 Freedom Daily as well.

9 I submit to you, ladies and gentlemen, that that is
10 the only piece of evidence in this entire case that where
11 someone asked Tim, not represented by counsel, in the middle of
12 nowhere, wherever he was at the time, on June 25, 2020.
13 June 15, 2020. Well, he's in Texas on the 12th, that I can
14 prove to you through the bank records. What does he say? I
15 bought an e-mail list. I bought an e-mail list. That's what
16 he's telling the bank. He maybe not even knew he's being
17 recorded. And that's what he's saying, everything here is
18 true. They talk about this guy Bill. What's your relationship
19 with Bill?

20 They rent a home from him. So they are paying him
21 rent.

22 They know that's true. That's true too. Everything
23 is true here. He's buying a list. That's reasonable doubt.
24 Reasonable doubt is not guilty. And then they are talking
25 about PayPal transfers. It is reimbursement for things we have

M5v3she2

Summation - Mr. Meringolo

1 done. They have paid their own money for. So there is money
2 going back and forth. That's reasonable doubt. This is a
3 critical piece of evidence. And if it was so bad for the
4 defense, why didn't they show it to you? Because it's buried.
5 It is buried in the bank records. And they know, they didn't
6 know we had Clara and Angelica.

7 MR. ROOS: Objection. The bank records are in
8 evidence.

9 THE COURT: Overruled.

10 MR. MERINGOLO: It's in evidence.

11 So, ladies and gentlemen, when you go back to -- first
12 of all, thank you, thank you for putting up with me. It's
13 okay, you don't even know, I appreciate it. I know no one woke
14 up and said I want to be on jury duty.

15 But, this is reasonable doubt, ladies and gentlemen.
16 You know, I ask you to use your common sense and the government
17 will come up here and say defense counsel, you go to prosecutor
18 school, defense counsel said this, defense counsel said that,
19 don't be misinterpreted what he says. He's baiting and
20 switching and doing this and he is doing that, and I say pull
21 up the bank record when they call Tim Shea. See what Tim Shea
22 had to say when they called him. They want to know if we are
23 going to make a decision in federal court in the Southern
24 District of New York. Wouldn't you want to know what Tim Shea
25 said? That's reasonable doubt because that's the evidence in

M5v3she2

Summation - Mr. Meringolo

1 the case.

2 Money is going back and forth. That's reasonable
3 doubt. There is no money coming from Bannon. There is no
4 money from Freedom Daily going to Bannon. There is only money
5 going back and forth.

6 Ranch Properties, not a shell company. It is a single
7 member LLC. Pull that \$80,000 guy. He can do whatever he
8 wants with the money. Wants to be protected. The evidence
9 will show you want to be protected from personal liability if
10 you're helping build a border wall. If you are providing
11 security with armed guards. If something happens, what happens
12 to you if you don't have a corporation? And making it
13 nefarious that it's in Wyoming? That he wants personal
14 liability. He wants -- he doesn't want anybody to know him?

15 Ask what would I do -- I am not saying you would ever
16 be involved in this -- what would you do if you were? Also,
17 the evidence shows there is no other income that year.
18 49-year-old guy. He leaves his job. And you know what he
19 believes? That list is valuable like we all do. Right? Like
20 the GoFundMe guy did. That's what the evidence shows, like we
21 know from our firsthand experiences, especially the people who
22 are in business. They have a target market for 384,000 people
23 that bought it. And who drafts that contract? Richard Kaye
24 drafts that contract, the guy who got \$600,000.

25 Thank you very much. I submit to you, ladies and

M5v3she2

1 gentlemen, this is a reasonable doubt case. And reasonable
2 doubt equals not guilty. Thank you very much.

3 THE COURT: Members of the jury, we're not finished
4 yet. We will have the rebuttal from the government after a
5 brief break. Remember that you are not allowed to discuss the
6 case yet. We'll have rebuttal, then my instructions, and only
7 after I tell you that you're ready to discuss the case can you
8 start deliberating. So don't discuss the case. I'll call you
9 back shortly.

10 (Jury excused)

11 THE COURT: I was hoping that the rebuttal would not
12 be lengthy so that I can get to my instructions before I have
13 them go to lunch.

14 MR. ROOS: I think --

15 MR. SOBELMAN: I am going to do my best. I guess what
16 does your Honor mean by lengthy?

17 THE COURT: Well, it's now --

18 MR. SOBELMAN: He took maybe an hour and 20 minutes.
19 I was hoping to take 20 or so.

20 THE COURT: So, the question would be whether or not
21 we have them have their lunch before they get their
22 instructions. And if you are going to take 20 minutes, they
23 are going to be pretty hungry by then. So, I'll allow them to
24 have their lunch before I start my instructions.

25 MR. SOBELMAN: Okay.

M5v3she2

Rebuttal - Mr. Sobelman

1 THE COURT: All righty.

2 MR. MERINGOLO: Thank you, Judge.

3 THE COURT: Yes.

4 (Recess)

5 (In open court; jury not present)

6 THE COURT: Please have the jurors return.

7 (Jury present)

8 THE COURT: Do the parties agree that the jurors are
9 present and properly seated?

10 MR. SOBELMAN: Yes, your Honor.

11 MR. MERINGOLO: Yes.

12 THE COURT: Please be seated.

13 Members of the jury, we're now going to hear the
14 rebuttal by the government.

15 MR. SOBELMAN: When Mr. Roos gave his summation, he
16 walked you step by step through the evidence that proves the
17 defendant's guilt beyond a reasonable doubt. And as you know,
18 that evidence is overwhelming.

19 When defense counsel spoke, you didn't hear as much
20 about the evidence. You heard arguments, passionate arguments.
21 He's fighting hard for his client. You didn't hear a lot about
22 the evidence. And this case isn't about the lawyers or
23 arguments. It is about the evidence.

24 Let me be clear. In our system, the defendant has no
25 burden. It is the government that has the burden, as you know.

M5v3she2

Rebuttal - Mr. Sobelman

1 We embrace that burden. But we are entitled to respond to the
2 defense's arguments and this is my chance to do that.

3 I'm not going to respond to every argument. He talked
4 I think for over an hour. I'm going to keep this as short as I
5 can. Most of what you heard was just a distraction, and I
6 think you already know that. But I do want to touch on a few
7 of the main themes just to make sure everything is clear in
8 your minds.

9 Now, defense counsel put up notes from a bank
10 interview that the defendant had with a bank employee. So
11 couple things he didn't tell you or didn't show you. Let's
12 take a look at the rest of the page. If we go to Government
13 Exhibit 2000, page 548983.

14 So, if we look at the top of the page, you'll see why
15 this interview took place. The bank flagged these transactions
16 as suspected money laundering, as suspected fraud. The bank,
17 using the same tools Mr. Palmer told you about, saw the same
18 thing that you saw in this trial. The use of half a dozen
19 money laundering techniques. That's why they're reaching out
20 to him.

21 The second thing defense counsel didn't tell you and
22 didn't point out to you is this occurs in May 2020, months
23 after the defendant learns about the federal investigation.
24 Months after he and Brian Kolfage and their co-conspirators get
25 their stories straight, and make those fake backdated

M5v3she2

Rebuttal - Mr. Sobelman

1 agreements. At this point, May 2020, it is an easy lie for the
2 defendant to tell. It's been cooked up months ago. This is
3 only more proof of the defendant's guilt.

4 By the way, it is not something the government hid.
5 It is in the government's own exhibit. For defense counsel to
6 say otherwise just isn't true. It is easily dismissed, and if
7 you want to read it at all, it is just another lie that the
8 defendant told.

9 It is obviously not a defense to fraud and money
10 laundering to say, well, I lied to the bank too when they asked
11 me about the same thing.

12 Similarly, the defense tried to suggest that there
13 might be other evidence out there that the government didn't
14 present in court. There is all these phones, there's Signal,
15 there's Wickr. Well, the judge is going to give you an
16 instruction about this, and that's how you'll know that you can
17 totally dismiss this argument. The judge will tell you:
18 During the questioning of some witnesses, the defense asked
19 whether those witnesses reviewed certain devices or materials
20 that are not in evidence. I -- the judge, not me -- instruct
21 you that each party had an equal opportunity or lack of
22 opportunity to review those devices and materials and offer
23 them into evidence.

24 When the judge gives that instruction, listen to it,
25 and understand that the evidence you have is overwhelming proof

M5v3she2

Rebuttal - Mr. Sobelman

1 of the defendant's guilt, and you don't need to speculate what
2 might be out there that wasn't brought into this court.

3 Defense counsel talked a little bit about Winning
4 Energy. And first, I think he wanted to have it at least two
5 ways, maybe three. First it was it doesn't matter, it is not
6 charged in this case, you shouldn't pay attention to it at all.
7 And later in his summation, his argument changed and it was
8 it's really important evidence, because it shows you that they
9 committed the fraud two different ways, and that means that
10 they didn't commit the fraud at all.

11 Both arguments are wrong. It is part of the charged
12 crime. It occurred during the charged conspiracy. It is part
13 of the fraud conspiracy. It is part of the money laundering
14 conspiracy.

15 MR. MERINGOLO: Objection, your Honor. It's not.

16 THE COURT: Overruled.

17 MR. SOBELMAN: And it is another example of how
18 Kolfage and Tim Shea defrauded We Build the Wall, took donors'
19 money, and spent it on something for themselves. A private
20 business that they had and that they were partners in on the
21 side. A classic money laundering technique. Take the money
22 out, put it into a different business, use that money to try to
23 make more money. That's what Winning Energy is all about.

24 And defense wants to say, well, they pretended it was
25 a loan, and therefore, because they didn't submit fake

M5v3she2

Rebuttal - Mr. Sobelman

1 invoices, like the other false fraudulent transactions, somehow
2 you should read something into that.

3 This is what you can read into it. The timing, it is
4 in 2020. It is after the defendant and Mr. Kolfage know
5 federal investigators are looking at them. So they do two
6 things differently. One, they paper it as a loan. Probably
7 because it would have been really unbelievable that Winning
8 Energy, an energy drink company, was doing some kind of work
9 for We Build the Wall. And second, they actually paper it at
10 the time it happens as opposed to backdating it. This time
11 they know they need to have something to show investigators
12 later. So they do it at the time.

13 But the loan never gets paid back, even though the
14 text messages that you saw in closing from the government show
15 you they're actually selling these drinks, they're making
16 money, but not a dollar of the loan gets paid back because it's
17 not a real loan. It is just self-dealing. It is just part of
18 the fraud.

19 Defense counsel talked about Kris Kobach a little bit.
20 He wants you to focus on, oh, there is a lawyer who worked for
21 We Build the Wall and he was paid a lot of money working for We
22 Build the Wall. Who cares how much Kris Kobach made. The
23 point of this is Kris Kobach was lied to. The defendant and
24 Kolfage hid things from him. It is in a stipulation. It is
25 not disputed at all. You saw the conflict of interest policy.

M5v3she2

Rebuttal - Mr. Sobelman

1 You know that Kris Kobach was the general counsel, he was the
2 top lawyer for We Build the Wall, he was a member of the board
3 of directors. And that Kolfage and Tim Shea, because he's
4 married to the treasurer and another member of the board,
5 Amanda Shea, they can't self-deal without disclosing it to the
6 board and getting approval. And you know that never happened
7 for any of the transactions with Winning Energy or Ranch
8 Property. Not one of them. Not they went for one and they
9 forgot for the other, but they went for 2019 and didn't go in
10 2020 or they went for 2020 but didn't go in 2019. Kris Kobach
11 knows about not a dollar going out. Because they know if he
12 knew, he'd say no. This is a misuse of our funds. You are not
13 just going to skim off the top of donor money.

14 There is nothing in that stipulation that's helpful to
15 the defense. The fact that someone else told Kris Kobach at
16 some point that Tim Shea was involved in security is not a
17 defense to this case.

18 Now relatedly, defense counsel suggested Tim Shea's
19 just this hard-working guy, who got paid for the work he did,
20 there is nothing wrong with getting paid for work that you do.
21 He actually earned all this money.

22 And it's not clear what defense counsel is exactly
23 trying to get you to believe. He says he is just a real estate
24 guy so he knows real estate. But then later he said, well, he
25 is a social media guy, all he knows is social media. Then we

M5v3she2

Rebuttal - Mr. Sobelman

1 see documents about drones, we see documents about security.

2 We see an e-mail to landowners that never got sent.

3 And just remember, for each of the invoices you saw,
4 including the ones defense counsel put up, there is a chart in
5 evidence showing how those invoices, the ones that were
6 actually sent to We Build the Wall, came with a kickback. Came
7 with a cut for Tim Shea, and a kickback to Brian Kolfage. What
8 kind of legitimate work arrangement could that possibly be?
9 It's not.

10 And by the way, when you do work, you get paid. But
11 when you do work, do you mark it up two-and-a-half times when
12 someone else does the work? And then give a cut of your part
13 to someone else the same day? Of course not. Your common
14 sense tells you exactly what's going on here, which is Tim Shea
15 scamming people, he's using money to buy energy drinks that he
16 can sell for his own profit and for Brian Kolfage's profit.
17 That's not honest. That's not hard work. Marking up other
18 people's invoices takes about 30 seconds. To say that, like
19 one of the invoices has four or six former military people were
20 guarding the construction site. Of course they deserve to be
21 paid for that work. No one is saying otherwise. But to spend
22 30 seconds creating your own invoice to bill for someone else's
23 work that you can take two-and-a-half times more than? That's
24 dishonest. That's fraud.

25 By the way, what did he do with all the money that he

M5v3she2

Rebuttal - Mr. Sobelman

1 pretended to earn? The cuts that he was taking from other
2 people's work? He didn't invest it in his business RPM. He
3 didn't pay employees, he didn't use it to pay his taxes.
4 Instead he paid kickbacks and he paid off his own credit card
5 bills. He bought a \$70,000 Range Rover. That's what he's
6 doing with the money.

7 Remember, the brilliant part of the scheme, and it
8 wasn't perfect, they're not perfect criminals, but the
9 brilliant part of the scheme is to insert Tim Shea in all these
10 different business arrangements where there is some work going
11 on. There is security contractors, maybe they are hiring
12 someone to fly a drone. But they insert him in the middle.
13 And the question is why? And you know from the invoices and
14 the bank records and the text messages exactly why. They want
15 an opportunity to take their cut in secret. And if he's in the
16 middle, he can do that.

17 There is some e-mails where you saw Tim Shea initially
18 just forwards the Vision Quest invoice for security to We Build
19 the Wall. They could have just paid it directly. And then the
20 next day, he sends a new one on RPM stationery for like
21 \$30,000 more for the same work. Why? So he can take a cut and
22 pay a kickback. There is no other reason.

23 Now there is a text message I want to pull up real
24 quick, Government Exhibit 32, that defense counsel showed the
25 beginning of the exchange. So it is April 5, 2019, early in

M5v3she2

Rebuttal - Mr. Sobelman

1 the scheme. And this is where Brian Kolfage says good job,
2 Tim, I heard your new company found a bunch of land for us.
3 Smiley face.

4 This is clearly a joke. Okay. And if you weren't
5 sure just based on that and the fact that Amanda Shea laughs at
6 it lower down, they don't say thank you. Thanks for
7 appreciating our hard work. Like, Brian Kolfage even says
8 Ranch Property Management, because he knows the joke might not
9 make sense if he doesn't explain what he's talking about.
10 Amanda Shea then jokes back RPMM is top notch. Brian
11 Kolfage -- this is the part that defense counsel didn't read to
12 you because it's not good for him. He says you hear? You
13 hear? We just got two big ones, meaning two properties. Two
14 land properties. Tim Shea doesn't say I know, I'm the one who
15 got the property. I've been working very hard and getting paid
16 legitimately. He says no, where is it? Because he has no idea
17 this is going on. No idea. He's not involved. Kolfage is
18 joking with him. They are going to pay him for something he
19 didn't do, because that's how they get their cut. So Tim
20 writes back. No, where is it? And Kolfage says call me.
21 Probably doesn't want to explain the whole thing in text
22 message. And the kicker is Amanda Shea says I was kidding
23 about the raise. I'm 10 times happier with RPMM. LOL.
24 Meaning, I'm very happy with the arrangement we recently agreed
25 to, for us just to get a cut from other people's work. I don't

M5v3she2

Rebuttal - Mr. Sobelman

1 want a raise for my \$70,000 salary because I know Tim will get
2 400K this year for doing very little. Riding on other people's
3 backs.

4 Now defense counsel also suggested it's some kind of
5 defense because a wall was built. Now, we told you, Ms. Moe
6 told you in her opening statement there is no dispute that a
7 wall was built. That many millions of the dollars that were
8 raised were used to build that wall. This is a complete
9 distraction. Building a wall isn't a defense to stealing, it
10 is not a defense to lying, it is not a defense to money
11 laundering, it is not a defense to obstruction of justice.
12 This case is not about whether a portion of a wall was built or
13 how long it was or how much money was spent on it. None of
14 that matters.

15 Judge Torres will read you the legal instructions, and
16 there is not going to be one thing in there that says, well, if
17 they built part of the wall, the defendant might not be guilty.
18 That's just not the law. He's guilty either way.

19 That makes sense, right? You can't raise millions of
20 dollars, steal a bunch of it, and say, but it's okay because I
21 didn't steal all of it. We actually used some of it for the
22 things we promised people we would use it for.

23 And ask yourself, why is defense counsel so focused on
24 the wall? It is an attempt to distract you from the evidence
25 that really matters. If you focus on that evidence, the text

M5v3she2

Rebuttal - Mr. Sobelman

1 messages, the e-mails, the bank records, defendant's done.

2 Right. He's guilty. Wall or no wall.

3 Defense counsel also talked a lot, very loudly, about
4 Rich Kaye who you know is a lawyer who did some work for We
5 Build the Wall. He even put up the payments going from We
6 Build the Wall to his law firm, as if that proves anything at
7 all. Remember, Rich Kaye was, first of all, We Build the
8 Wall's lawyer, right, not Tim Shea's lawyer. No evidence in
9 this trial that he was Tim Shea's lawyer, that he provided any
10 legal advice to Tim Shea, that he had any conversations with
11 Tim Shea, that he talked to Tim Shea about anything.

12 He also talked about other law firms. We didn't even
13 hear about those law firms during the trial. There was a list
14 of law firms and other money they were paid. I am not sure
15 what he's suggesting about that, but it's meaningless.

16 Now, Judge Torres is going to instruct you that this
17 is not a defense. I expect she'll instruct you the defense has
18 not claimed and cannot claim that the defendant's conduct was
19 lawful, because he acted in good faith on the advice of a
20 lawyer. She will also instruct you that a lawyer's involvement
21 with an individual or entity does not itself constitute a
22 defense to any of the charges in the case.

23 And your common sense tells you this makes perfect
24 sense. You can't create fake documents and then claim it's
25 okay just because a lawyer was involved in some way. You can't

M5v3she2

Rebuttal - Mr. Sobelman

1 sign a fake contract just because someone else sent it to you.
2 Tim Shea, not Rich Kaye, is the one who stole the money,
3 laundered it, and kept a cut. Tim Shea, not Rich Kaye, is the
4 one who signed his name to that fake backdated contract. Rich
5 Kaye or any of the other lawyers provide no defense in this
6 case.

7 Defense counsel also argued in his opening and his
8 closing about aftertax dollars. He's using aftertax dollars,
9 you can do whatever you want with your aftertax dollars. This
10 is America. You can do whatever you want with your money.

11 There's a lot of things you can't do with your money,
12 right. That's why we have laws. But the premise is totally
13 flawed, so before I get to the major point of you just can't do
14 whatever you want with your money, which is obvious. The
15 premise is flawed.

16 One, he files his taxes in August 2020, after they
17 were due, long after they were due, and he doesn't pay a
18 dollar. This isn't aftertax money. He's paying these
19 kickbacks before he files his taxes, and then when he belatedly
20 files them, he leaves things out, as you know. And he doesn't
21 pay a dollar.

22 So the idea that, well, this is a hardworking guy who
23 pays his taxes on time, and then he just uses his money to give
24 it to people that coincidentally happen to fit into the kickback
25 schedule that his co-conspirators agreed to, you can reject all

M5v3she2

Rebuttal - Mr. Sobelman

1 of that.

2 Now, back to the first point. You can't just do
3 whatever you want with your money. Judge Torres will read you
4 the legal instructions. She'll explain to you it is illegal to
5 pay kickbacks. It is illegal to transfer more than \$10,000 in
6 crime proceeds. She'll explain to you it is illegal to move
7 stolen money to conceal its source or destination.

8 It isn't the case if I receive money, even if it is
9 crime proceeds from the crime I committed, and then I can just
10 do whatever I want with it as long as I later tell the IRS I
11 received some money. Not a defense. Not at all.

12 By the way, the money we've been talking about, it is
13 not even Tim Shea's money. Right? He was saying it was his
14 money. No, it is donors' money. This is money that he and
15 Kolfage and others were stealing. It is We Build the Wall's
16 money. It is donors' money. It is Ms. Keller's money. It is
17 Mr. Ward's money. 50 and \$100 at a time that he's taking out
18 tens and hundreds of thousands of dollars.

19 So even if you could do what you wanted with your own
20 money, which you can't, even in America. You certainly aren't
21 allowed to do what you want with other people's money.

22 Now Mr. Meringolo spent some time on this idea of a
23 shell company. He says, well, if they did some work, the whole
24 case falls apart because then it is not a shell company. Judge
25 Torres will read you the legal instructions. You won't hear

M5v3she2

Rebuttal - Mr. Sobelman

1 anything about a shell company. The point of you hearing about
2 that through the trial, which I think you all understand, is
3 that you can't use another company for fraud. Whether it does
4 a little business, whether it does a lot of business, doesn't
5 matter. The point about Ranch Property is it was set up in a
6 certain way that has all the hallmarks of being a vehicle for
7 money laundering. Right. It has a generic name, set up in
8 Wyoming.

9 Oh, and defense counsel says he didn't want people to
10 know he owned it for safety reasons or something like that.
11 Political reasons. This is the guy who's married to the woman
12 who is a front person for We Build the Wall. She is the
13 treasurer, she is the CFO, she is in all the filings. You saw
14 she is on the website. He and her are both posting publicly on
15 Facebook and other places about We Build the Wall. They are
16 not exactly embarrassed or hiding their participation in it.

17 And, by the way, Winning Energy is certainly just as
18 political as We Build the Wall, and he's putting himself out
19 there on that. You heard from Ms. Deperi, on social media he's
20 saying I am the CEO of Winning Energy. And they're putting
21 that stuff online everywhere. So that excuse holds no weight.
22 And it doesn't explain the fact that they create the splash
23 page for legitimacy, and they use the company's accounts over
24 and over as a passthrough.

25 And you saw with the SBA loan too. There is no

M5v3she2

Rebuttal - Mr. Sobelman

1 business expenses. He just takes it out and spends it. There
2 is no business that they're running. Whatever you want to call
3 it, shell company, passthrough, it was used in this case, in
4 the facts that matter, as a vehicle for money laundering.

5 Defense counsel also tried to focus your attention on
6 a bunch of unrelated irrelevant money transfers from Freedom
7 Daily's bank account to the Sheas. This was the handwritten
8 exhibit. You also know this is a distraction for at least
9 three reasons. First, this money doesn't come from We Build
10 the Wall. Right. This case is about money stolen from We
11 Build the Wall, laundered, kicked back. That's the money we
12 followed during this trial. The fact that they're business
13 partners for other things, and they're passing back money to
14 each other that, by the way, as you know from the IRS
15 testimony, and Government Exhibit 911, Tim Shea never reports
16 this on his taxes, right. Kind of undermines the he just uses
17 aftertax dollars. Well, maybe when he reports things. He
18 doesn't report this. But this money has nothing to do with We
19 Build the Wall. Has nothing to do with the kickbacks. It is a
20 total distraction.

21 Second, you saw these transfers started before the
22 defendant and Kolfage even came up with We Build the Wall and
23 they continued after. They don't line up with the kickback
24 schedule. They're not relevant. There is no connection. So
25 the question before you is, where did the stolen We Build the

M5v3she2

Rebuttal - Mr. Sobelman

1 Wall money go? That chart, those bank records don't help you
2 answer that question. Whatever side hustle Brian Kolfage and
3 Tim Shea had in addition to all this other activity, all this
4 fraud, all this money laundering, it just doesn't matter.

5 By the way, the kickbacks for the wall money only went
6 one way. You don't see any money going to Brian Kolfage and
7 then going to Tim Shea. It is all going one way.

8 Just one or two more things. Defense counsel talked a
9 lot about this donor list agreement. This backdated agreement.
10 He said well, the list was really valuable. Remember
11 Mr. Palmer talked to you about different covers people have for
12 transactions, especially backdated. He said sometimes -- the
13 example he gave was a car. Like saying well, there a is fake
14 transfer document for this car, but like it says Ferrari, and
15 Ferraris are worth a lot of money, man, so it must have really
16 happened.

17 No. The fact that this list might have been worth a
18 lot of money provides no defense to the defendant. That
19 agreement, that backdated agreement that they only made after
20 learning about the investigation to try to fool investigators,
21 what do we know about it? How do we know they didn't have some
22 kind of handshake agreement earlier?

23 First, the defendant's own text messages, which I
24 won't go through again but Mr. Roos showed you, Government
25 Exhibit 41 in case you want to take a look, show there was no

M5v3she2

Rebuttal - Mr. Sobelman

1 deal. There was a series of text messages in June and July
2 months after this agreement was supposedly in place where they
3 are saying -- where Tim Shea is saying, wow, a list, that
4 sounds really complicated, I don't know anything about how to
5 do that. And there is another e-mail where he says maybe we
6 can do some kind of side business to make more money out of
7 this We Build the Wall thing. Maybe something with an e-mail
8 list.

9 Defense counsel didn't talk about those text messages
10 or e-mails because there is no good response from them. They
11 mean what they say and they say what they mean. There was no
12 agreement. It didn't exist. Not until they learned about the
13 investigation.

14 Now, another reason why this makes no sense. The fact
15 that deal would have ever existed, which is Kolfage and Shea
16 are partners in We Build the Wall and other things as you know.
17 And Government Exhibit 15, there is a text message exchange
18 very early on in December 2018, where they are saying, well,
19 I'm thinking maybe -- and this is Kolfage talking -- maybe
20 we'll make you, meaning Tim Shea or Amanda, the president of We
21 Build the Wall. Turns out they decide to make Kolfage the
22 president. But they are equals here. And it would make no
23 sense for Tim Shea to pay \$150,000 to his business partner for
24 something that they basically co-owned to the extent anyone
25 owns it. Why would Tim Shea, who is a partner in We Build the

M5v3she2

Rebuttal - Mr. Sobelman

1 Wall, pay Kolfage for We Build the Wall's list that he also
2 owns? It makes no sense and your common sense tells you that
3 would have never happened.

4 Also, why would Tim Shea have agreed to spend \$150,000
5 of his own money for a brand-new company, money that his
6 company doesn't have, right, the balance is zero before each We
7 Build the Wall payment comes in, or sometimes it is \$100 or
8 \$2,000. It is close to zero. He agrees to spend \$150,000 to
9 buy a list of e-mail addresses that of course he already has,
10 but also what's he going to do with them? What's he going to
11 do with a \$150,000 e-mail list? The only business RPMM ever
12 did with anyone, and the only transactions they ever had with
13 anyone is with We Build the Wall. So what's he going to do?
14 He is going to rent the list from We Build the Wall and then
15 sell it to We Build the Wall? Like, it doesn't make any sense
16 because it didn't happen. It was just a cover story.

17 Now defense counsel criticized us, he says, well, the
18 people who testified, they were only talked to weeks or months
19 before the trial. They weren't all interviewed before the
20 indictment, before the defendant was arrested. And you know
21 that's the case for at least two reasons. And you know why
22 that's the case for at least two reasons. One is you know from
23 the subpoena and Billue's testimony, the investigation was
24 secret to prevent obstruction of the exact type that Tim Shea
25 engaged in. Right. The government's not going to go around

M5v3she2

Rebuttal - Mr. Sobelman

1 interviewing dozens of people from around the country, when
2 there is a secret investigation going on to prevent
3 obstruction.

4 Second, and most importantly, the evidence in this
5 case as you know is devastating. And it is in text messages
6 and it is in e-mails and it is in bank records. Things that
7 don't need to be interviewed. You don't have to ask a bank
8 record a question to know what happened. You don't have to ask
9 a text message a question to know what happened. That's the
10 most important evidence in this case. Any suggestion otherwise
11 is wrong.

12 Defense counsel had this whole thing, common sense,
13 and reasonable doubt, and the thing he repeated over and over
14 and over. I'll just say this about reasonable doubt. You
15 heard a lot about it from him. You'll hear a little more from
16 the judge. But just remember this. There is nothing mystical
17 or magical about the term reasonable doubt. It is the very
18 same standard that's applied in every criminal case every day
19 in the country and has been since its founding. Every day
20 juries reach verdicts.

21 Defense counsel also suggested that maybe Bill Ward
22 somehow didn't care that Tim Shea was stealing money from We
23 Build the Wall. The argument I thought came out a little
24 unclear. But, the real question is this. And defense counsel
25 read a few questions about -- the colloquy with Bill Ward. Oh,

M5v3she2

Rebuttal - Mr. Sobelman

1 well, Bill Ward said people could get paid for doing security.
2 Defense counsel didn't ask Bill Ward, and I think you know why,
3 would it have been okay with you if someone had taken the
4 security invoices, doubled them, and then kept the difference?
5 And then paid a kickback with some of that? He didn't ask him
6 would it be okay if the treasurer's husband had self-dealed
7 with the organization, and violated the conflict of interest
8 rules to take money for his own energy drink company without
9 telling the other members of the board of directors.

10 (Continued on next page)

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M5VVSHE3

Rebuttal - Mr. Sobelman

1 MR. SOBELMAN: No questions like that were asked,
2 right. And we all know how Bill Ward would have answered; we
3 all know how Nicole Keller would have answered; we all know how
4 the other 380,000 people that Tim Shea defrauded would have
5 answered. They would have said, No, that would not have been
6 okay with me.

7 No one donates to a nonprofit thinking that the
8 nonprofit is going to loan money to an energy drink company.
9 No one donates to a nonprofit so that someone who is business
10 partners with the president can insert himself in otherwise
11 legitimate transactions so he can take his cut; so he can buy a
12 \$70,000 Range Rover. Bill Ward would not be okay with that,
13 and neither should you.

14 Now, when we started this trial, Ms. Moe asked you to
15 do three things:

16 First, pay close attention to the evidence. You've
17 done that. We thank you very much for that.

18 Second, follow Judge Torres's instructions on the law.
19 She's going to give you those instructions later this
20 afternoon.

21 Third, use your common sense, the same common sense
22 you use every day.

23 Now don't let defense counsel distract you. Don't be
24 swayed by emotions or sympathy or yelling or banging on the
25 table or running around or tearing things down and crossing

M5VVSHE3

Rebuttal - Mr. Sobelman

1 things out and ripping things up. Just look at the evidence
2 and the law. Use your common sense. If you do those things,
3 you will quickly see that the evidence is overwhelming. It
4 proves that Tim Shea defrauded donors, donors like Nicole
5 Keller, Bill Ward, donors who trusted them with their \$50,
6 their \$100, who donated to a cause they believed in. They
7 trusted that people like Tim Shea, like the defendant, wouldn't
8 steal from them. But he did.

9 The evidence also proves that Tim Shea defrauded We
10 Build the Wall. It proves that Tim Shea laundered the money he
11 stole. And it proves that Tim Shea signed a fake, backdated
12 agreement, a fake contract to cover up his crimes.

13 He's guilty.

14 THE COURT: Members of the jury, it's lunchtime. And
15 so we will take an hour for lunch, and then you'll come back
16 and you'll hear my instructions on the law.

17 It's very, very tempting, now that you have heard the
18 summations, that you'll feel that you're ready to talk about
19 the case. But you're not. Only after I give you my
20 instructions are you permitted to start discussing the case.

21 So don't discuss the case. Don't let anyone discuss
22 it in your presence. Have a good lunch.

23 We'll be back in an hour.

24 (Jury not present)

25 THE COURT: Have a good lunch.

M5VVSHE3

Charge

1 (Luncheon recess)

2 A F T E R N O O N S E S S I O N

3 2:45 P.M.

4 (Jury present)

5 THE COURT: Do the parties agree that all jurors are
6 present and properly seated?

7 MR. SOBELMAN: Yes, your Honor.

8 MR. MERINGOLO: Yes, your Honor.

9 THE COURT: Please be seated.

10 Members of the jury, I have your instructions on your
11 chairs. I'd like you to read along with me silently.

12 We're going to start on page 5.

13 Ladies and gentlemen of the jury, we are now
14 approaching the most important part of this case, your
15 deliberations. It has been obvious to me and to counsel that
16 until now, you have faithfully discharged your duty to listen
17 carefully and to observe each witness who testified. I ask
18 that you give me that same careful attention as I read these
19 instructions.

20 You have now heard all the evidence in the case, as
21 well as the final arguments of the lawyers. My duty at this
22 point is to instruct you on the law. It is your duty as jurors
23 to follow the law as I state it and to apply the law to the
24 facts as you find them from the evidence presented.

25 On these legal matters, you must take the law as I

M5VVSHE3

Charge

1 give it to you. If an attorney has stated a legal principle
2 different from any that I state to you in my instructions, it
3 is my instructions that you must follow. Moreover, you should
4 not single out any instruction as alone stating the law.
5 Instead, you should consider my instructions as a whole when
6 you retire to deliberate in the jury room. You should not, any
7 of you, be concerned about the wisdom of any rule that I state.
8 Regardless of any opinion that you may have as to what the law
9 may be or what it should be, it is your sworn duty to base your
10 verdict upon the law as I give it to you.

11 Your final role is to pass upon and decide the fact
12 issues in this case. You, the members of the jury, are the
13 sole and exclusive judges of the facts. You pass upon the
14 weight of the evidence; you determine the credibility of the
15 witnesses; you resolve such conflicts as there may be in the
16 testimony; and you draw whatever reasonable inferences you
17 decide to draw from the facts as you have determined them. I
18 shall later discuss with you how to determine the credibility
19 or believability of the witnesses.

20 In determining the facts, you must rely upon your own
21 recollection of the evidence. What the lawyers have said in
22 their opening statements, in their closing arguments, and in
23 their objections is not evidence. Nothing that I may have said
24 during the trial or may say during these instructions
25 constitutes evidence.

M5VVSHE3

Charge

1 Questions asked by the attorneys or even myself are
2 not in and of themselves evidence. Only questions coupled with
3 answers are evidence. Therefore, you may not infer any fact
4 from the mere asking of a question. Moreover, you may not
5 consider any answer that I directed you to disregard or that I
6 directed struck from the record.

7 The evidence in this case consists of the sworn
8 testimony of the witnesses, on both direct and
9 cross-examination; the exhibits received in evidence; and the
10 stipulations of the parties. By contrast, you may not consider
11 exhibits that were marked for identification or any other
12 document you may have seen but not received as evidence. Only
13 those exhibits actually received may be considered as evidence.

14 Similarly, testimony that has been excluded, stricken,
15 or that you may have been instructed to disregard is not
16 evidence and must be ignored. Some evidence has been received
17 for limited purposes only. When I have given you a limiting
18 instruction as to such evidence, you must follow that
19 instruction and consider such evidence only for the limited
20 purpose that I allowed.

21 Obviously anything you may have seen or heard outside
22 the courtroom is not evidence. Nothing I have said or done
23 should be used by you to determine whether the government has
24 met its burden of proof. I have no view as to whether the
25 government has met its burden, and you should not infer that I

M5VVSHE3

Charge

1 do from anything that I have said or done.

2 You should draw no inference or conclusion for or
3 against any party by reason of lawyers making objections.
4 Counsel not only have the right, but the duty, to make legal
5 objections when they think that such objections are
6 appropriate.

7 Also, do not draw any inference from any of my
8 rulings. The rulings I have made during trial are not any
9 indication of my views of what your decision should be as to
10 whether or not the defendant has been proven guilty beyond a
11 reasonable doubt. You should draw no inference or conclusion
12 of any kind, favorable or unfavorable, with respect to any
13 witness or any party in the case, by reason of any comment,
14 question, or instruction of mine.

15 The defendant has pleaded not guilty to the charges in
16 the indictment. Because the defendant has pleaded not guilty,
17 the burden is on the prosecution to prove guilt beyond a
18 reasonable doubt. This burden always remains with the
19 government and never shifts to the defendant. Indeed, the law
20 never imposes upon a criminal defendant the burden of proving
21 his innocence or even the duty of calling any witness or
22 producing any evidence at all.

23 The law presumes a defendant innocent of all charges
24 against him. I therefore instruct you that you must presume
25 the defendant innocent throughout your deliberations until such

M5VVSHE3

Charge

1 time, if ever, as you as a jury are unanimously satisfied that
2 the government has proven the defendant's guilt beyond a
3 reasonable doubt.

4 The defendant began the trial with a clean slate.
5 This presumption of innocence alone is sufficient to acquit
6 unless you are unanimously convinced beyond a reasonable doubt
7 of the defendant's guilt, after a careful and impartial
8 consideration of all the evidence against him. If the
9 government fails to overcome the presumption of innocence and
10 does not sustain its burden of proving guilt beyond a
11 reasonable doubt with respect to the defendant, you must find
12 the defendant not guilty.

13 The presumption of innocence was with the defendant
14 when the time began and remains with him even now as I speak.
15 It will continue into your deliberations unless and until you
16 are convinced that the government has proven the defendant's
17 guilt beyond a reasonable doubt.

18 In determining whether the government has satisfied
19 its burden of proving the defendant's guilt beyond a reasonable
20 doubt, you may consider all the evidence presented, whether by
21 the government or the defense. In doing so, remember that even
22 though the defendant may have introduced evidence, the burden
23 of proof remains on the government.

24 I have said that the government must prove the
25 defendant's guilt beyond a reasonable doubt. The question then

M5VVSHE3

Charge

1 is what is a reasonable doubt? The words almost define
2 themselves. It is doubt based upon reason and common sense.
3 It is doubt that a reasonable person has after carefully
4 weighing all of the evidence. It is doubt which would cause a
5 reasonable person to hesitate to act in a matter of importance
6 in his or her personal life.

7 Proof beyond a reasonable doubt must, therefore, be
8 proof of such a convincing character that a reasonable person
9 would not hesitate to rely and act upon it in the most
10 important of his or her own affairs. A reasonable doubt is not
11 a caprice or whim. It is not a speculation or suspicion. It
12 is not an excuse to avoid the performance of an unpleasant
13 duty. And it is not sympathy.

14 In a criminal case, the burden is at all times on the
15 government to prove guilt beyond a reasonable doubt. The law
16 does not require that the government prove guilt beyond all
17 possible doubt or to a mathematical certainty. On the other
18 hand, it is not sufficient to prove that the defendant is
19 probably guilty. Proof of guilt beyond a reasonable doubt is
20 proof that leaves you so firmly convinced of the defendant's
21 guilt, that you have no reasonable doubt of the existence of
22 any element of the crime or of the defendant's identity as the
23 person who committed the crime.

24 A reasonable doubt may arise from evidence or lack of
25 evidence. If, after a fair and impartial consideration of all

M5VVSHE3

Charge

1 the evidence, you are satisfied of the defendant's guilt beyond
2 a reasonable doubt as to the charge you are considering, it is
3 your duty to find the defendant guilty. On the other hand, if
4 after a fair and impartial consideration of all the evidence,
5 you have a reasonable doubt, then you must find the defendant
6 not guilty of that charge.

7 There are two types of evidence which you may properly
8 use in deciding whether the defendant is guilty or not guilty
9 of the charged crimes: Direct and circumstantial evidence.

10 Direct evidence is evidence that proves a disputed
11 fact directly. For example, where a witness testifies to what
12 he or she saw, heard or observed, that is called direct
13 evidence.

14 Circumstantial evidence, by contrast, is evidence that
15 tends to prove a disputed fact by proof of other facts. To
16 remind you of the example that I gave you at the beginning of
17 the trial, suppose that when you came into the courthouse today
18 the sun was shining, it was a nice day, but that the courtroom
19 shades were drawn and you could not look outside. Then later,
20 as you were sitting here, someone walked in with a dripping wet
21 umbrella; and soon after someone else walked in with a dripping
22 wet raincoat.

23 Now, on our assumed facts, you cannot look outside the
24 courtroom and you cannot see whether or not it is raining. So
25 you have no direct evidence of that fact. But on the

M5VVSHE3

Charge

1 combination of facts about the umbrella and the raincoat, it
2 would be reasonable for you to conclude that it had been
3 raining.

4 That is all there is to circumstantial evidence.
5 Using your reason and experience, you infer from established
6 facts the existence or the nonexistence of some other fact.
7 Many material facts, such as a person's state of mind, are not
8 easily proved by direct evidence. Usually, such facts are
9 established by circumstantial evidence and the reasonable
10 inferences you draw. Circumstantial evidence is of no less
11 value than direct evidence, for it is a general rule that the
12 law makes no distinction between direct and circumstantial
13 evidence, but simply requires that before convicting a
14 defendant, the jury must be satisfied of the defendant's guilt
15 beyond a reasonable doubt from all of the evidence in the case.

16 Now, whether the circumstantial evidence leads you
17 inevitably to a particular inference is another matter. Let me
18 give you another example. Let's say that one evening you go
19 into a subway station. It's a local stop and it's not rush
20 hour. You arrive at the platform and you are surprised to find
21 a large crowd of people waiting on the platform. You didn't
22 expect there to be so many people, but there are lots of people
23 waiting.

24 Now, you might infer from this fact that there must
25 not have been a train for quite some time. But is that an

M5VVSHE3

Charge

1 inference you must draw from the circumstantial evidence of a
2 crowded subway platform?

3 It is certainly a weaker inference than the one about
4 the umbrella and the raincoat, because if you think more about
5 it, maybe there are other equally plausible explanations.
6 Maybe there was a train just a minute ago that went out of
7 service and they said, Everybody off the train. Or maybe it's
8 10:30 p.m. and you're waiting at the 50th Street stop of the
9 No. 1 train, and a Broadway show has just let out. There is
10 more than one plausible possible explanation. So in this
11 example, you wouldn't have as strong a basis for drawing any
12 one particular inference.

13 It must be clear to you by now that counsel for the
14 parties are asking you to draw very different conclusions about
15 some of the factual issues in this case. An important part of
16 that decision will involve making judgments about the testimony
17 of the witnesses that you have listened to and observed. In
18 making these judgments, you should carefully scrutinize all of
19 the testimony of each witness, the circumstances under which
20 each witness testified, and any other matter in evidence that
21 may help you to decide the truth and the importance of each
22 witness's testimony.

23 Your decision whether or not to believe a witness may
24 depend on how that witness impressed you. Was the witness
25 candid, frank, and forthright? Or did the witness seem to be

M5VVSHE3

Charge

1 evasive or suspect in some way? How did the way the witness
2 testified on direct examination compare with how the witness
3 testified on cross-examination? Was the witness consistent or
4 contradictory? Did the witness appear to know what he or she
5 was talking about? Did the witness strike you as someone who
6 was trying to report his or her knowledge accurately? What was
7 the witness's demeanor like? These are examples of the kinds
8 of common sense questions you should ask yourselves in deciding
9 whether a witness is or is not truthful.

10 In addition, you may consider whether a witness had
11 any possible bias or relationship with a party or any possible
12 interest in the outcome of the case. Such a bias or
13 relationship does not necessarily make the witness unworthy of
14 belief. These are simply factors that you may consider. If a
15 witness made statements in the past that are inconsistent with
16 his or her testimony during the trial concerning facts that are
17 at issue, you may consider that fact in deciding how much of
18 the testimony, if any, to believe.

19 In making this determination, you may consider whether
20 the witness purposefully made a false statement or whether it
21 was an innocent mistake. You may already consider whether the
22 inconsistency concerns an important fact or merely a small
23 detail, as well as whether the witness had an explanation for
24 the inconsistency and, if so, whether that explanation appealed
25 to your common sense.

M5VVSHE3

Charge

1 If you find that a witness has testified falsely as to
2 any material fact or if you find that a witness had previously
3 been untruthful when testifying under oath or otherwise, you
4 may reject that witness's testimony in its entirety or you may
5 accept only those parts that you believe to be truthful or that
6 are corroborated by other independent evidence in the case.

7 You should also consider whether the witness had an
8 opportunity to observe the events he or she testified about,
9 and whether the witness's recollection of the facts stands up
10 in light of the other evidence in the case. In other words,
11 what you must try to do in deciding credibility is to size up a
12 person just as you would in any important matter where you are
13 trying to decide if a person is truthful, straightforward, and
14 accurate in his or her recollection.

15 Now, a witness may be discredited or impeached by
16 contradictory evidence or by evidence that at some other time
17 the witness had said or done something that is inconsistent
18 with the witness's present testimony. The earlier inconsistent
19 or contradictory statements are admissible only to discredit or
20 impeach the credibility of a witness, not to establish the
21 truth of earlier statements made somewhere else.

22 You may also consider a witness's earlier silence or
23 inaction that is inconsistent with his or her courtroom
24 testimony to determine whether the witness is impeached. If
25 you believe that any witness has been impeached and, thus,

M5VVSHE3

Charge

1 discredited, then it is for you to give the testimony of that
2 witness as much or as little weight, if any, as you think it
3 deserves.

4 You are not required to accept testimony, even though
5 the testimony is uncontradicted and the witness's testimony is
6 not challenged. You may reject it because of the witness's
7 bearing or demeanor or because of the apparent improbability of
8 the testimony or for other reasons sufficient for you to
9 conclude that the testimony is not worthy of belief. It is for
10 you, the jury, and for you alone, not the lawyers or the
11 witnesses or me as the judge to decide the credibility of
12 witnesses who appeared here and the weight that their testimony
13 deserves.

14 I have referred to the two separate decisions that the
15 jury must make in evaluating witnesses: Credibility and
16 weight. When you decide whether you believe what a witness
17 says, you decide credibility. When you decide how much to
18 allow that evidence to affect your decision on any issue, you
19 decide the weight to give to the testimony.

20 In evaluating the credibility of witnesses, you should
21 take into account any evidence that the witness who testified
22 may benefit in some way from the outcome of this case. Such an
23 interest in the outcome creates a motive to testify falsely and
24 may sway the witness to testify in a way that advances his or
25 her own interests. Therefore, if you find that any witness

M5VVSHE3

Charge

1 whose testimony you are considering may have an interest in the
2 outcome of this trial, then you should bear that factor in mind
3 when evaluating the credibility of his or her testimony and
4 accept it with great care.

5 This is not to suggest that a witness who has an
6 interest in the outcome of a case will testify falsely. It is
7 for you to decide to what extent, if at all, the witness's
8 interest has affected or colored his or her testimony.

9 You are to perform the duty of finding the facts
10 without bias or prejudice as to any party. You are to perform
11 your final duty in an attitude of complete fairness and
12 impartiality. The case is important to the government, for the
13 enforcement of criminal laws is a matter of prime concern to
14 the community. Equally it is important to the defendant who is
15 charged with serious crimes.

16 The fact that the prosecution is brought in the name
17 of the United States of America entitles the government to no
18 greater consideration than that accorded to any other party to
19 a litigation. By the same token, it is entitled to no less
20 consideration. The parties, whether the government or an
21 individual, stand as equals at the bar of justice.

22 Under your oath as jurors, you are not to be swayed by
23 sympathy. You are to be guided solely by the evidence in this
24 case; and the crucial question that you must ask yourselves as
25 you sift through the evidence is: Has the government proven

M5VVSHE3

Charge

1 the guilt of the defendant beyond a reasonable doubt?

2 It is for you, and you alone, to decide whether the
3 government has proven that the defendant is guilty of the
4 crimes charged, solely on the basis of the evidence and subject
5 to the law as I have instructed you. It must be clear to you
6 that once you let fear or prejudice or bias or sympathy
7 interfere with your thinking, there is a risk that you will not
8 arrive at a true and just verdict.

9 If you have a reasonable doubt as to the defendant's
10 guilt, you should not hesitate to find the defendant not
11 guilty. But, on the other hand, if you find that the
12 government has met its burden of proving the defendant's guilt
13 beyond a reasonable doubt, then you should not hesitate to find
14 the defendant guilty.

15 Under your oath as jurors, you cannot allow a
16 consideration of possible punishment that may be imposed upon
17 the defendant, if convicted, to influence you in any way or to
18 enter into your deliberations. The duty of imposing sentence
19 is mine, and mine alone. Your function is to weigh the
20 evidence and determine whether the defendant is or is not
21 guilty based on the evidence and the law. Therefore, I
22 instruct you not to consider punishment or possible punishment
23 during your deliberations.

24 The defendant, Timothy Shea, is formally charged in an
25 indictment. The indictment is a document containing the

M5VVSHE3

Charge

1 charges against the defendant. It is not evidence or proof of
2 the defendant's guilt. You are directed not to consider or
3 discuss how the indictment was obtained. Before you begin your
4 deliberations, you will be provided with a copy of the
5 indictment. Therefore, I will not read the entire indictment
6 to you at this time; instead, I will summarize in general terms
7 the offenses charged. Then I will explain to you in detail the
8 elements of those offenses.

9 The indictment contains three counts or charges
10 against the defendant.

11 Count One charges the defendant with conspiracy to
12 commit wire fraud, in violation of Title 18, United States
13 Code, Section 1349. This count alleges that the defendant
14 agreed to participate in a scheme to make or cause to be made
15 through the use of interstate communications such as text
16 messages, emails, phone calls, and posts on websites and social
17 media, false statements to donors, specifically, that 100
18 percent of the funds donated to We Build the Wall would be used
19 for construction of a wall at the southern border of the United
20 States, and that none of the money donated will be used to
21 compensate Brian Kolfage, the founder and president of We Build
22 the Wall. The count further alleges that these statements were
23 made in order to obtain the donors' money.

24 Count One also alleges that the defendant and his
25 co-conspirators devised a scheme for businesses created by the

M5VVSHE3

Charge

1 defendant to receive money from We Build the Wall in exchange
2 for the defendant paying a kickback to Mr. Kolfage.

3 Count Two charges the defendant with conspiracy to
4 commit money laundering, in violation of Title 18, United
5 States Code, Section 1956(h). This count alleges that the
6 defendant agreed to launder the fraudulently obtained proceeds
7 from the scheme charged in Count One. In particular, Count Two
8 alleges that the defendant agreed to engage in financial
9 transactions that he knew were designed to conceal and disguise
10 the nature, location, source, ownership, or control of the
11 money obtained through the scheme charged in Count One. Count
12 Two also alleges that the defendant agreed to engage in
13 financial transactions involving more than \$10,000 of the
14 fraudulently obtained proceeds.

15 Count Three charges the defendant with falsification
16 of records, in violation of Title 18, United States Code,
17 Section 1519 and 2. This count alleges that the defendant
18 created or caused the creation of documents that were falsely
19 backdated and stated false reasons for payments from We Build
20 the Wall to the defendant, and from the defendant to
21 Mr. Kolfage, with the intent to impede, obstruct, or influence
22 an investigation by the United States Attorney's Office for the
23 Southern District of New York.

24 You must consider each count separately and you must
25 return a verdict of guilty or not guilty for each count.

M5VVSHE3

Charge

1 Whether you find the defendant guilty or not guilty as to one
2 offense should not affect your verdict as to any other offense
3 charged.

4 Here, Counts One and Two both charge conspiracy
5 offenses, so let me explain to you what a conspiracy is. These
6 instructions about conspiracy apply to both counts.

7 A conspiracy is a kind of criminal partnership, a
8 combination or agreement of two or more persons to join
9 together to accomplish some unlawful purpose. The crime of
10 conspiracy to violate a federal law is an independent offense.
11 It is separate and distinct from the violation of any specific
12 federal laws, which the law refers to as substantive crimes.

13 If a conspiracy exists, even if it should fail in its
14 purpose, it is still punishable as a crime. Indeed, you may
15 find the defendant guilty of conspiracy to commit an offense
16 even though the substantive crime which was the object of the
17 conspiracy, was not actually committed. Congress has deemed it
18 appropriate to make conspiracy standing alone a separate crime,
19 even if the conspiracy is not successful.

20 In order for the defendant to be guilty of conspiracy,
21 the government must prove beyond a reasonable doubt the
22 following two elements:

23 First, that the charged conspiracy existed; and
24 second, that at some point during the conspiracy's existence,
25 the defendant knowingly and willfully joined the alleged

M5VVSHE3

Charge

1 conspiracy.

2 Now, let us separately consider the two elements:
3 First, the existence of the conspiracy; and second, whether the
4 defendant knowingly and willfully joined the conspiracy.

5 Starting with the first element, what is a conspiracy?
6 A conspiracy is an agreement or an understanding between two or
7 more people to accomplish by concerted action one or more
8 unlawful purposes. In this case, the unlawful purpose alleged
9 to be the object of the conspiracy charged in Count One is to
10 commit wire fraud. And the unlawful purpose alleged to be the
11 object of the conspiracy in Count Two is to commit money
12 laundering. I will give you instructions on each of these
13 unlawful purposes or objects of the conspiracies later on.

14 The gist or the essence of the crime of conspiracy is
15 the unlawful agreement of two or more people to commit a crime.
16 As I mentioned earlier, the ultimate success of the conspiracy
17 or the actual commission of the crime that is the object of the
18 conspiracy is not required for a conspiracy to have existed.
19 Rather, the government is required to prove beyond a reasonable
20 doubt only that two or more people in some way or manner,
21 explicitly or implicitly, came to an understanding to
22 accomplish the unlawful object.

23 To prove the existence of a conspiracy, the government
24 is not required to show that two or more people sat around a
25 table and entered into an express or formal agreement orally or

M5VVSHE3

Charge

1 in writing, stating that they had formed a conspiracy to commit
2 a crime. Similarly, you need not find that the alleged
3 co-conspirators stated in words or writing what the scheme was,
4 its object or purpose, every precise detail of the scheme or
5 the means by which its object or purpose was to be
6 accomplished. What the government must prove is that there was
7 a mutual understanding, either spoken or unspoken, between two
8 or more people, to cooperate with each other to accomplish an
9 unlawful act.

10 It is rare that a conspiracy can be proven by direct
11 evidence of an explicit agreement. Rather, in determining
12 whether there has been an unlawful agreement as alleged in the
13 indictment, you must consider the actions and conduct of all
14 the alleged co-conspirators that were meant to carry out the
15 apparent criminal purpose. The old adage "actions speak louder
16 than words" applies here. Often the only evidence that is
17 available with respect to the existence of a conspiracy is that
18 of disconnected acts and conduct on the part of the alleged
19 individual co-conspirators. When taken all together and
20 considered as a whole, however, these acts and conduct may
21 warrant the inference that a conspiracy existed just as
22 conclusively as more direct proof, such as evidence of an
23 express agreement.

24 Further, although the indictment charges that the
25 alleged conspiracies began in or around December 2018, and

M5VVSHE3

Charge

1 continued up to in or around June 2020, it is not essential
2 that the government prove that the conspiracy in question
3 started or ended on those specific dates or that it existed
4 throughout the entire period. Rather, it is sufficient to
5 satisfy the first element if you find that the charged
6 conspiracy was formed and that it existed for any time within
7 the charged period.

8 If you conclude that the government has proven beyond
9 a reasonable doubt that a charged conspiracy existed, then you
10 must consider the second element: Whether the defendant
11 participated in the conspiracy knowingly and willfully, with
12 knowledge of its unlawful purpose or purposes, and in
13 furtherance of its unlawful object or objects.

14 To act knowingly means to act voluntarily and
15 deliberately rather than mistakenly or inadvertently. To act
16 willfully means to act voluntarily and with a wrongful purpose.

17 Put differently, an act is done knowingly and
18 willfully if it is done purposefully and deliberately with an
19 intent to do something the law forbids; that is, the
20 defendant's act must have been the product of the defendant's
21 conscious determination rather than the product of a mistake,
22 accident, mere negligence, or some other innocent reason.

23 Now, science has not yet devised a manner of looking
24 into a person's mind and knowing what the person is thinking.
25 However, you have before you evidence of certain acts,

M5VVSHE3

Charge

1 conversations, and statements alleged to have been made by,
2 with, or in the presence of the defendant and others. The
3 ultimate facts of knowledge and criminal intent may be
4 established by words, conduct, and all the surrounding
5 circumstances, as well as the rational or logical inferences
6 that may be drawn from the words and conduct. It is for you to
7 determine whether the government has established beyond a
8 reasonable doubt such knowledge and intent on the part of the
9 defendant.

10 It is not necessary for the government to show that
11 the defendant was fully informed as to all the details of the
12 conspiracy in order for you to infer knowledge on his part; nor
13 does the defendant need to know the full extent of the
14 conspiracy or all its participants. Indeed, it is not
15 necessary that the government knew more than one other member
16 of the conspiracy. It is also not necessary that the defendant
17 received any monetary benefit from participating in the
18 conspiracy. It is enough if he participated in the conspiracy
19 knowingly and willfully as I have defined those terms.
20 Although proof of a financial interest in the outcome of the
21 scheme is not essential, if you find that the defendant had
22 such an interest, that is a factor you may properly consider in
23 determining whether he was a member of the conspiracy.

24 If you determine that the defendant became a member of
25 the conspiracy, the duration and extent of the defendant's

M5VVSHE3

Charge

1 participation has no bearing on the issue of the defendant's
2 guilt. Some co-conspirators play major roles, but others play
3 minor roles. An equal role is not what the law requires. In
4 fact, even a single act may be sufficient to draw the defendant
5 within the ambit of the conspiracy if it meets the elements I
6 have described.

7 The defendant also need not have joined the conspiracy
8 at the outset. The defendant may have joined it at any time:
9 at the beginning, in the middle, or at the end, and the
10 defendant will still be held responsible for all that was done
11 before he joined, as well as all that was done during the
12 conspiracy's existence when the defendant was a member.

13 However, I want to caution you that mere association
14 with a member of a conspiracy does not make a person a member
15 of the conspiracy, even when that association is coupled with
16 knowledge that the second person is committing a crime. Mere
17 presence at the scene of a crime, even coupled with knowledge
18 that a crime is taking place, is not sufficient to support a
19 conviction. In other words, knowledge without participation is
20 not sufficient to satisfy the second element. What is
21 necessary is that the defendant participated in the conspiracy
22 with the knowledge of its unlawful purpose and with the intent
23 to aid in the accomplishment of its unlawful object or objects.

24 In sum, if you find that the defendant, with an
25 understanding of the unlawful nature of the charged conspiracy,

M5VVSHE3

Charge

1 intentionally engaged, advised, or assisted in the conspiracy
2 for the purpose of furthering the illegal undertaking, you
3 should conclude that the defendant became a knowing and willing
4 participant in the unlawful agreement, that is to say, a
5 conspirator.

6 You will recall that I have admitted into evidence
7 against the defendant the acts and statements of others because
8 these acts and statements were committed or made by people who
9 the government alleges were also confederates or
10 co-conspirators of the defendant. The reason for allowing this
11 evidence to be received against the defendant has to do, in
12 part, with the nature of the crime of conspiracy. As I have
13 said, a conspiracy is often referred to as a partnership in
14 crime. As in other types of partnerships, when people enter
15 into a conspiracy to accomplish an unlawful end, each and every
16 member becomes an agent for the other conspirators in carrying
17 out the conspiracy.

18 Therefore, the reasonably foreseeable declarations,
19 statements, and omissions of any member of the conspiracy made
20 in furtherance of the common purpose of the conspiracy are
21 deemed under the law to be the acts of all of the members, and
22 all of the members are responsible for such acts, declarations,
23 statements, and omissions.

24 If you find beyond a reasonable doubt the defendant
25 was a member of a conspiracy charged in the indictment, then

M5VVSHE3

Charge

1 any acts done or statements made in furtherance of the
2 conspiracy by a person also found by you to have been a member
3 of the same conspiracy may be considered against the defendant.
4 This is so even if such acts were committed or such statements
5 were made in the defendant's absence and/or without his
6 knowledge.

7 I have just instructed you on the elements of a
8 conspiracy charge generally; and those instructions apply to
9 Count One, which charges a wire fraud conspiracy.

10 The elements of a wire fraud conspiracy are:

11 First, that two or more people entered into an
12 unlawful agreement to commit wire fraud; and second, that the
13 defendant knowingly and willfully entered into the agreement.

14 I will now address the objects of the conspiracy
15 alleged in Count One. The objects of this conspiracy are to
16 violate Title 18, United States Code, Sections 1343 and 1346,
17 which prohibit wire fraud and honest services wire fraud.

18 Sections 1343 and 1346 provide in pertinent part:

19 Whoever, having devised or intending to devise any
20 scheme or artifice to defraud or for obtaining money or
21 property by means of false or fraudulent pretenses,
22 representations, or promises, transmits or causes to be
23 transmitted by means of wire, radio, or television
24 communication in interstate or foreign commerce, any writings,
25 signs, signals, pictures, or sounds for the purpose of

M5VVSHE3

Charge

1 executing such scheme or artifice shall be guilty of a crime.
2 The term "scheme or artifice to defraud" includes a scheme or
3 artifice to deprive another of the intangible right of honest
4 services.

5 As I explained earlier, the object of a conspiracy is
6 the illegal goal the co-conspirators agree or hope to achieve.

7 Count One of the indictment charges that there were
8 two objects or illegal goals of the conspiracy. As I told you
9 before, you need not find that the defendant actually committed
10 the objects of the conspiracy, but only that he agreed with
11 others to commit one or both of those crimes.

12 The first object of the conspiracy alleges that the
13 defendant agreed to commit wire fraud. I will refer to this as
14 the substantive wire fraud object. The second object of the
15 conspiracy alleges that the defendant agreed to commit honest
16 services wire fraud. I will refer to this as the honest
17 services wire fraud object.

18 There are two lines for Count One for you to fill in
19 on the verdict form. The first line asks whether the defendant
20 is guilty of the first object of the conspiracy; and the second
21 line asks whether the defendant is guilty of the second object
22 of the conspiracy. In order to find the defendant guilty of
23 either object, there must be unanimous agreement on that
24 object. With that in mind, I will now proceed to discuss the
25 elements of each form of wire fraud.

M5VVSHE3

Charge

1 We will first consider the elements of the first
2 object, substantive wire fraud, which has three elements:

3 First, the existence of a scheme or artifice to
4 defraud or to obtain money or property by means of materially
5 false or fraudulent pretenses, representations, or promises;
6 second, the defendant participated in the scheme or artifice to
7 defraud or to obtain money or property by means of materially
8 false or fraudulent pretenses, representations, or promises,
9 with knowledge of its fraudulent nature and with specific
10 intent to defraud; and, third, in the execution of the scheme,
11 the defendant or one of his co-conspirators used or caused to
12 be used interstate or foreign wires.

13 If you find beyond a reasonable doubt that the
14 defendant agreed with at least one other person to commit
15 substantive wire fraud, then the substantive wire fraud object
16 of Count One would be proven. However, if you find that the
17 government has not met its burden to prove that the defendant
18 agreed with at least one other person to commit substantive
19 wire fraud, then the object would not be proven.

20 I will now describe the three elements of substantive
21 wire fraud in greater detail. The wire fraud statute provides
22 that it can be satisfied by the existence of a scheme or
23 artifice to defraud or to obtain money or property by means of
24 false or fraudulent pretenses, representations, or promises. A
25 scheme or artifice is just a plan for the accomplishment of an

M5VVSHE3

Charge

1 object. A pretense, representation, statement, or promise is
2 fraudulent if it was made falsely and with intent to deceive.
3 A representation, statement, claim, or promise may also be
4 fraudulent if it contains half-truths or if it conceals
5 material facts in a manner that makes what is said or
6 represented deliberately misleading or deceptive.

7 The deception need not be premised on spoken or
8 written words alone; the arrangement of words or the
9 circumstances in which they are used may convey the false and
10 deceptive appearance. If there is deception, the manner in
11 which it is accomplished does not matter. This element does
12 not require that any particular person actually relied on or
13 actually suffered damages as a consequence of any fraudulent
14 representation or concealment of facts.

15 Nor need you find that the defendant profited from
16 fraud. It is enough that a false statement or a statement
17 omitting material facts that made what was said deliberately
18 misleading was made as part of a fraudulent scheme in the
19 expectation that it would be relied on. You must concentrate
20 on whether there was such a scheme, not on the consequences of
21 the scheme. Of course, proof concerning the accomplishment of
22 the goals of the scheme may be the most persuasive evidence of
23 the existence of the scheme itself.

24 In addition, the false or fraudulent representation or
25 failure to disclose must relate to a material fact or matter.

M5VVSHE3

Charge

1 A material fact is one which would reasonably be expected to be
2 of concern to a reasonable and prudent person in relying upon
3 the representation or statement in making a decision. That
4 means that if you find a particular statement or representation
5 false, you must determine whether that statement or
6 representation was one that a reasonable person might have
7 considered important in making his or her decision. The same
8 principle applies to fraudulent half-truths or omissions, that
9 is, failures to disclose facts. A scheme to defraud need not
10 be shown by direct evidence, but may be established by all the
11 circumstances and facts in the case.

12 As to the second element of substantive wire fraud,
13 the defendant must have devised or participated in the
14 fraudulent scheme knowingly, willfully, and with specific
15 intend to defraud. As I have already instructed you, to act
16 knowingly means to act voluntarily and deliberately rather than
17 mistakenly or inadvertently. To act willfully means to act
18 voluntarily and with a wrongful purpose. To act with intent to
19 defraud means to act knowingly and with the specific intent to
20 deceive for the purpose of causing some financial or property
21 loss to another. The words "devised" and "participated" are
22 words that you are familiar with and, therefore, I need not
23 spend much time defining them for you.

24 To devise a scheme to defraud is to concoct or plan
25 it. To participate in a scheme to defraud means to associate

M5VVSHE3

Charge

1 oneself with it with a view and an intent toward making it
2 succeed. Although a mere onlooker is not a participant in a
3 scheme to defraud, it is not necessary that a participant be
4 someone who personally and visibly executes the scheme to
5 defraud. Direct proof of knowledge and fraudulent intent is
6 almost never available. It would be a rare case where it could
7 be shown that a person wrote or stated that, as of a given time
8 in the past, he committed an act with fraudulent intent. Such
9 direct proof is not required.

10 The ultimate facts of knowledge and criminal intent,
11 though subjective, may be established by circumstantial
12 evidence, based upon a person's outward manifestations, his
13 words, conduct, and acts, and all the surrounding circumstances
14 disclosed by the evidence and the rational or logical
15 inferences that may be drawn from them.

16 Because an essential element of the crime charged is
17 intent to defraud, it follows that good faith on the part of
18 the defendant is a complete defense to a charge of substantive
19 wire fraud. The burden is on the government to prove
20 fraudulent intent and the consequent lack of good faith beyond
21 a reasonable doubt.

22 The third and final element of substantive wire fraud
23 is that interstate wires, for example, phone calls, email
24 communications, text messages, social media, or website posts,
25 and bank wires were used in furtherance of the scheme to

M5VVSHE3

Charge

1 defraud or to obtain money or property by means of materially
2 false or fraudulent pretenses, representations, or promises.

3 The wire communication must be an interstate wire,
4 that is, it must pass between two or more states or a state and
5 a foreign country. The use of the wire need not itself be a
6 fraudulent representation. It must, however, further or assist
7 in some way in carrying out the scheme.

8 It is not necessary for the defendant to be directly
9 or personally involved in any wire communication, as long as
10 the communication is reasonably foreseeable in the execution of
11 the alleged scheme to defraud in which the defendant is accused
12 of participating. In this regard, it would be sufficient to
13 establish this element of the crime if the evidence justifies a
14 finding that the defendant or one of his co-conspirators caused
15 the wires to be used by others. But this does not mean that
16 the defendant or one of his co-conspirators themselves must
17 have specifically authorized others to execute a wire
18 communication.

19 When one does an act with knowledge that the use of
20 wires will follow in the ordinary course of business, or where
21 such use of wires can reasonably be foreseen, even though not
22 actually intended, then he causes the wires to be used.

23 Incidentally, this wire communication requirement is satisfied
24 even if the wire communication was done by a person with no
25 knowledge of the fraudulent scheme, including a victim of the

M5VVSHE3

Charge

1 alleged fraud.

2 Let me also add the following: Only the wire
3 communication must be reasonably foreseeable, not its
4 interstate or foreign component. Thus, if you find that the
5 wire communication was reasonably foreseeable and the
6 interstate or foreign wire communications actually took place,
7 then this element is satisfied, even if it was not foreseeable
8 that the wire communication would cross state or national
9 lines.

10 The crime of honest services wire fraud, which is the
11 second object of Count One, has three elements:

12 First, the existence of a scheme or artifice to
13 defraud We Build the Wall by depriving it of its right to Brian
14 Kolfage's honest services through kickbacks; second, the
15 defendant participated in the scheme or artifice to defraud
16 with knowledge of its fraudulent nature and with specific
17 intent to defraud; and third, in the execution of the scheme,
18 the defendant or one of his co-conspirators used or caused to
19 be used interstate or foreign wires.

20 If you find beyond a reasonable doubt that the
21 defendant agreed with at least one other person to commit
22 honest services wire fraud, then the honest services wire fraud
23 object of Count One would be proven. However, if you find that
24 the government has not met its burden to prove that the
25 defendant agreed with at least one other person to commit

M5VVSHE3

Charge

1 honest services wire fraud, then the object would not be
2 proven. As you may have noticed, the third element of honest
3 services wire fraud is identical to the third element of
4 substantive wire fraud; so you can refer to the instructions I
5 just gave you for the third element of substantive wire fraud
6 for the third element of this object as well.

7 The first element of honest services wire fraud as
8 charged against the defendant is the existence of a scheme or
9 artifice to defraud We Build the Wall by depriving it of its
10 right to Mr. Kolfage's honest services through one or more
11 kickbacks. A corporate officer or director owes a fiduciary
12 duty of loyalty to the organization of which the person is an
13 officer or director, which means they have a duty to put their
14 organization's interests first, ahead of their own. When the
15 government proves beyond a reasonable doubt that a corporate
16 officer or director has obtained a corrupt payment for himself
17 in exchange for taking actions in connection with his
18 organization, the officer or director has breached his
19 fiduciary duty of loyalty to the organization. This is so
20 because the organization is not receiving what it expects and
21 is entitled to, namely, the loyal services of its officer or
22 director.

23 A scheme to defraud in this context is a plan to
24 deprive We Build the Wall of its right to Mr. Kolfage's honest
25 services through one or more kickbacks in a *quid pro quo*.

M5VVSHE3

Charge

1 "Quid pro quo" is Latin and it means "this for that" or "these
2 for those." A kickback occurs when a person directly or
3 indirectly promises, gives, or offers a corporate officer or
4 director something of value, such as money, in exchange for the
5 performance of an act or a promise to perform an act, and the
6 act itself provides the source of the funds to be kicked back.
7 The kickback can be given on a one-time basis or as a stream of
8 payments. The specific transactions comprising the illegal
9 scheme need not match up precisely this for that. The scheme
10 to defraud must be material to the corporate officer or
11 director's organization, meaning that the scheme had a natural
12 tendency to influence or is capable of influencing a decision
13 or action by the organization.

14 The government is not required to show that the
15 corporate officer or director performed or promised to perform
16 an act solely because of the thing of value he received. All
17 that is required is that the corporate officer or director
18 performed or promised to perform the act in question at least
19 in part because of the thing of value he received.

20 Furthermore, it is not necessary that the government
21 prove the defendant or his co-conspirators caused or intended
22 to cause any harm to We Build the Wall. Although the
23 government need not prove that any action taken by Mr. Kolfage
24 was contrary to We Build the Wall's interests, you may consider
25 the existence or nonexistence of such evidence in determining

M5VVSHE3

Charge

1 whether Mr. Kolfage took any action at least in part because of
2 the potential kickback or kickbacks paid by the defendant, and
3 not exclusively because it was at the direction of or for the
4 benefit of We Build the Wall. Rather, the intended loss that
5 the government must prove is only the organization's loss of
6 its intangible right to its officer or director's honest
7 services.

8 In other words, it is not a defense that the offer or
9 promise of anything of value was made by the defendant to
10 Mr. Kolfage in exchange for actions that were lawful,
11 desirable, or even beneficial to We Build the Wall. The
12 offense of honest services fraud is not concerned with the
13 wisdom or results of the actions taken by the corporate officer
14 or director, but rather with the manner in which the corporate
15 officer or director decides to take those actions.

16 The second element of honest services wire fraud as
17 charged against the defendant is that the defendant
18 participated in the scheme or artifice to defraud We Build the
19 Wall by depriving it of Mr. Kolfage's honest services knowingly
20 and willfully with knowledge of its fraudulent nature and with
21 specific intent to defraud. I have already instructed you
22 regarding what it means to act knowingly and willfully and to
23 participate in or devise a scheme, and you should use those
24 instructions here.

25 As I explained earlier, direct proof of knowledge and

M5VVSHE3

Charge

1 fraudulent intent is almost never available. The ultimate
2 facts of knowledge and criminal intent – though subjective –
3 may be established by circumstantial evidence, based upon a
4 person's outward manifestations, his words, conduct, and acts
5 and all the surrounding circumstances disclosed by the
6 evidence, and the rational or logical inferences that may be
7 drawn from them.

8 The fact that an officer or director's conduct
9 violates an organization's rules, policies, or codes of conduct
10 does not necessarily mean that there was a scheme to defraud.
11 Nor is it sufficient to merely prove that Mr. Kolfage was
12 engaged in undisclosed self-dealing or failure to disclose a
13 conflict of interest. However, you may consider any evidence
14 that the defendant knew that Mr. Kolfage intentionally did or
15 did not disclose or concealed material information about a
16 financial or personal conflict of interest, money received, or
17 any behavior indicating consciousness of guilt as evidence of
18 the defendant's state of mind.

19 Since an essential element of the crime charged is
20 intent to defraud, it follows that the good faith on the part
21 of the defendant is a complete defense to a charge of honest
22 services wire fraud. The burden is on the government to prove
23 fraudulent intent and the consequent lack of good faith beyond
24 a reasonable doubt.

25 As a reminder, the third element, the honest services

M5VVSHE3

Charge

1 wire fraud object, the use of interstate wires, is the same as
2 the third element of the substantive wire fraud object. And
3 you can apply the instruction I gave you earlier for the honest
4 services wire fraud object as well.

5 Count Two charges the defendant with participating in
6 a conspiracy to commit money laundering, in violation of Title
7 18, United States Code, Section 1956(h).

8 Specifically, Count Two charges the defendant with
9 conspiring to commit money laundering from in or around
10 December 2018, through in or around June 2020, by agreeing to
11 launder the proceeds of the wire fraud conspiracy charged in
12 Count One. I have already instructed you on the elements of a
13 conspiracy charge generally, and those instructions apply to
14 Count Two, which charges a money laundering conspiracy.

15 The elements of money laundering conspiracy are:

16 First, that two or more people entered into an
17 unlawful agreement to commit money laundering; and second, that
18 the defendant knowingly and willfully entered into the
19 agreement. In other words, the elements of the conspiracy
20 charged in Count Two are the same elements the government is
21 required to prove with respect to the conspiracy alleged in
22 Count One; namely, the existence of an agreement to commit a
23 crime and knowing and willful entry of the defendant into that
24 agreement. As I explained earlier, the object of a conspiracy
25 is the illegal goal the co-conspirators agree or hope to

M5VVSHE3

Charge

1 achieve.

2 Count Two of the indictment charges that there were
3 two objects or illegal goals of the conspiracy. As I told you
4 before, you need not find that the defendant actually committed
5 the objects of the charged conspiracy, but only that he agreed
6 with others to commit at least one of the objects.

7 The first object of the conspiracy alleges that the
8 defendant agreed to commit money laundering by engaging in
9 financial transactions that involve the proceeds of the wire
10 fraud in order to conceal or disguise the nature, location,
11 source, ownership, or control of the proceeds of the wire
12 fraud. I will refer to this object as concealment money
13 laundering.

14 The second object of the conspiracy alleges that the
15 defendant agreed to commit money laundering by engaging in
16 monetary transactions greater than \$10,000 involving the
17 proceeds of the wire fraud.

18 There are two lines for Count Two for you to fill in
19 on the verdict form. The first line asks whether the defendant
20 is guilty of the first object of the conspiracy; and the second
21 line asks whether the defendant is guilty of the second object
22 of the conspiracy. In order to find the defendant guilty of
23 either object, there must be unanimous agreement on that
24 object. With that in mind, I will now proceed to discuss the
25 elements of each form of money laundering.

M5VVSHE3

Charge

1 We will first consider the elements of the first
2 object, which is concealment money laundering.

3 Concealment money laundering has the following
4 elements:

5 First, that the defendant conducted or attempted to
6 conduct a financial transaction which must, in some way or
7 degree, have affected interstate or foreign commerce.

8 Second, that the financial transaction at issue
9 involved the proceeds of specified unlawful activity, which
10 here is alleged to have been a wire fraud scheme.

11 Third, that the defendant knew that the financial
12 transaction involved the proceeds of some form of unlawful
13 activity.

14 And fourth, that the defendant knew that the
15 transaction was designed in whole or in part either to disguise
16 the nature, location, source, ownership, or control of the
17 proceeds of the unlawful activity.

18 If you find beyond a reasonable doubt that the
19 defendant agreed with at least one other person to commit
20 concealment money laundering, then the concealment money
21 laundering object of Count Two would be proven. However, if
22 you find that the government has not met its burden to prove
23 that the defendant agreed with at least one other person to
24 commit concealment money laundering, then the object would not
25 be proven.

M5VVSHE3

Charge

1 The first element of concealment money laundering is
2 that the defendant conducted a financial transaction which in
3 some way or degree affected interstate or foreign commerce.
4 The term "conducts" includes the action of initiating,
5 concluding, or participating in initiating or concluding a
6 transaction. The term "financial transaction" means, one, a
7 transaction involving a financial institution which is engaged
8 in or the activities of which affect interstate or foreign
9 commerce in any way or degree; or two, a transaction which in
10 any way or degree affects interstate or foreign commerce and
11 involves the movement of funds by wire or other means or
12 involves one or more monetary instruments. I instruct you that
13 a federally insured bank, a commercial bank, a private bank, a
14 credit union, and a loan or finance company all constitute
15 financial institutions.

16 A transaction involving a financial institution
17 includes a deposit/withdrawal/transfer between accounts,
18 exchange of currency, loan, extension of credit, purchase or
19 sale of any stock, bond, certificate of deposit, or any other
20 monetary instrument, use of a safe-deposit box or any other
21 payment, transfer, or delivery by, through, or to a financial
22 institution by whatever means. The term "funds" includes any
23 currency, money or other medium of exchange that can be used to
24 pay for goods and services.

25 Interstate commerce includes any transmission,

M5VVSHE3

Charge

1 transfer, or transportation of goods or services, both tangible
2 and intangible, communications and/or persons between persons,
3 places or entities located in one state, including the District
4 of Columbia, and persons, places or entities located in another
5 state, regardless of whether done for a business purpose or
6 otherwise. "Foreign commerce" means the same thing, except it
7 is between a person, place or entity in the United States and a
8 person, place or entity in a foreign country.

9 In determining whether a person or institution is
10 engaged in or whether a transaction affects interstate or
11 foreign commerce, the involvement in interstate or foreign
12 commerce can be minimal. Any involvement at all will satisfy
13 this element. It does not matter whether the effect on
14 interstate or foreign commerce was harmful or beneficial to a
15 particular business or to commerce in general. The government
16 satisfies its burden of proving an effect on interstate or
17 foreign commerce if it proves beyond a reasonable doubt any
18 effect, whether it was harmful or not.

19 In addition, it does not matter whether the defendant
20 actually intended or anticipated an effect on interstate or
21 foreign commerce by his actions or that commerce was actually
22 affected. All that is necessary is that the natural and
23 probable consequences of the acts the defendant agreed to take
24 would affect interstate or foreign commerce.

25 The second element of concealment money laundering is

M5VVSHE3

Charge

1 that the financial transactions must involve the proceeds of
2 specified unlawful activity. The term "proceeds" means any
3 property or any interest in property that someone acquires or
4 retains as profits resulting from the commission of the
5 specified unlawful activity.

6 The term "specified unlawful activity" means any one
7 of a variety of offenses described in the statute. In this
8 case, the government has alleged that the money involved in
9 financial transactions at issue in this case was derived from
10 the wire fraud conspiracy charged in Count One of the
11 indictment. I instruct you as a matter of law that the charge
12 in Count One meets the definition of specified unlawful
13 activity, but you must determine whether the funds involved in
14 the financial transactions were the proceeds of that unlawful
15 activity.

16 The third element of concealment money laundering is
17 that the defendant knew that the financial transactions at
18 issue involved the proceeds of some form – though not
19 necessarily which form – of unlawful activity. Keep in mind
20 that it is not necessary for the defendant to know that the
21 proceeds came from the wire fraud scheme or that the defendant
22 personally participated in the wire fraud scheme. It is
23 sufficient that the defendant knew that the proceeds came from
24 some form of unlawful activity.

25 The fourth and final element of concealment money

M5VVSHE3

Charge

1 laundering concerns the purpose of the transaction.

2 Specifically, the fourth element is that the defendant
3 conducted financial transactions with knowledge that the
4 transactions were designed, in whole or in part, to conceal or
5 disguise the nature, location, source, ownership, or control of
6 the proceeds of the specified unlawful activity. The terms I
7 have just used have their everyday ordinary meanings.

8 As I have previously instructed, to act knowingly
9 means to act purposely and deliberately, and not because of
10 mistake or accident, mere negligence or other innocent reason;
11 that is, the acts must be the product of a defendant's
12 conscious objective. If you find that the evidence establishes
13 beyond a reasonable doubt that the defendant knew the purpose
14 of this particular transaction in issue, and that the
15 transaction was either designed to conceal or disguise the true
16 origin of the property in question, then this element is
17 satisfied.

18 The intent to disguise or conceal the true origin of
19 the property need not be the sole motivating factor; however,
20 if you find that the defendant knew of the transaction, but did
21 not know that it was either designed to conceal or disguise the
22 true origin of the property in question, but instead thought
23 the transaction was intended to further an innocent
24 transaction, you must find that this element has not been
25 satisfied and find the defendant not guilty.

M5VVSHE3

Charge

1 Proof that the defendant knew the purpose of the
2 financial transaction was to conceal or disguise the location
3 or ownership of the proceeds of unlawful activity may be
4 established by circumstantial evidence. In other words, you
5 are entitled to find from the circumstances surrounding the
6 financial transaction what the purpose of the activity was, and
7 that the defendant knew of that purpose. For the fourth
8 element to be satisfied, the defendant need not know which
9 specified unlawful activity he was agreeing to help conceal.
10 He need only know that a purpose of the financial transaction
11 was concealing the nature, location, source, ownership or
12 control of the funds.

13 The second object of Count Two is engaging in monetary
14 transactions of over \$10,000 in property derived from specified
15 unlawful activity. The elements of this object are as follows:

16 First, the defendant engaged in a monetary transaction
17 in or affecting interstate commerce; second, that the monetary
18 transaction involved criminally derived property of a value
19 greater than \$10,000; third, that the property was derived from
20 specified unlawful activity; fourth, that the defendant acted
21 knowing that the transaction involved proceeds of a criminal
22 offense; and fifth, that the transaction took place in the
23 United States.

24 If you find beyond a reasonable doubt that the
25 defendant agreed with at least one other person to engage in

M5VVSHE3

Charge

1 monetary transactions involving over \$10,000 in property
2 derived from specified unlawful activity, then the second
3 object of Count Two would be proven. However, if you find that
4 the government has not met its burden to prove that the
5 defendant agreed with at least one other person to engage in
6 monetary transactions of over \$10,000 in property derived from
7 specified unlawful activity, then the object would not have
8 been proven.

9 The first element of this object is that the defendant
10 agreed to engage in a monetary transaction in or affecting
11 interstate commerce. The term monetary transaction means the
12 deposit, withdrawal, transfer, or exchange in or affecting
13 interstate or foreign commerce of funds or a monetary
14 instrument by, through, or to a financial institution. The
15 term "interstate or foreign commerce" means commerce between
16 any combination of states or between the United States and a
17 foreign country. You must find that had the object of the
18 conspiracy been completed, the transaction would have affected
19 interstate commerce in some way, however minimal. The same
20 definition of "interstate commerce" used in reference to the
21 concealment money laundering object applies here.

22 The second element of this object is that the monetary
23 transactions involved criminally derived property having a
24 value in excess of \$10,000. The term "criminally derived
25 property" means any property constituting or derived from

M5VVSHE3

Charge

1 proceeds obtained from a criminal offense. The terms
2 "specified unlawful activity and proceeds" have the same
3 meanings I provided previously with respect to the first object
4 of the conspiracy. I instruct you as a matter of law that wire
5 fraud is both a criminal offense and specified unlawful
6 activity.

7 The government is not required to prove that all of
8 the property involved in the transaction was criminally derived
9 property. However, the government must prove that more than
10 \$10,000 of the property involved was criminally derived
11 property.

12 The third and fourth elements of this object are that
13 the property derived from specified unlawful activity, and that
14 the defendant acted knowing that the transaction involved
15 proceeds of a criminal offense. The term "specified unlawful
16 activity" was defined previously, and that definition applies
17 equally to this second object of the conspiracy charged in
18 Count Two.

19 I instruct you that the government is not required to
20 prove that the defendant knew the particular offense from which
21 the criminally derived property was derived. However, the
22 government must prove beyond a reasonable doubt that the
23 defendant knew that the transaction involved criminally derived
24 property, which I remind you means any property constituting or
25 derived from proceeds obtained from a criminal offense. If you

M5VVSHE3

Charge

1 find that the government has established beyond a reasonable
2 doubt that the defendant knew that the transaction involved
3 property derived from a criminal offense, then this element is
4 satisfied. The fifth element of this object is that the
5 agreed-upon transaction took place in the United States.

6 Count Three charges the defendant with falsification
7 of records, in violation of Title 18, United States Code,
8 Sections 1519 and 2. Specifically, Count Three charges the
9 defendant with creating or causing the creation of, in or
10 around October 2019, documents that were falsely backdated and
11 stated false reasons for payments from We Build the Wall to the
12 defendant and from the defendant to Mr. Kolfage, with the
13 intent to impede, instruct, or influence an investigation by
14 the United States Attorney's Office for the Southern District
15 of New York.

16 Section 1519 provides: Whoever knowingly alters,
17 destroys, mutilates, conceals, covers up, falsifies, or makes a
18 false entry in any record, document, or tangible object, with
19 the intent to impede, obstruct, or influence the investigation
20 or proper administration of any matter within the jurisdiction
21 of any department or agency of the United States or any case
22 filed under Title 11 or in relation to or contemplation of any
23 such matter or case shall be guilty of a crime.

24 The elements of falsification of records are, first,
25 that the defendant falsified or caused the falsification of a

M5VVSHE3

Charge

1 dock; second, the defendant acted knowingly; and third, the
2 defendant acted with the intent to impede, obstruct, or
3 influence an investigation within the jurisdiction of a
4 department or agency of the United States Government.

5 The first element is that the defendant falsified any
6 document. Both tampering with preexisting documents and
7 creating a new document may constitute falsifying a document.
8 A written contract may be falsified if it misrepresents the
9 true nature of the parties' agreement or backdates an agreement
10 to appear that it was signed at an earlier time.

11 The second element is that the defendant acted
12 knowingly as I have already defined that term. Whether the
13 defendant acted knowingly may be proven by the defendant's
14 conduct and by all of the facts and circumstances surrounding
15 the case.

16 The third element the government must prove beyond a
17 reasonable doubt is that the defendant acted with the intent to
18 impede, obstruct, or influence an investigation within the
19 jurisdiction of a department or agency of the United States
20 Government. The government is not required to prove that the
21 defendant knew his conduct would obstruct a federal
22 investigation or that a federal investigation would take place
23 or that he knew of the limits of federal jurisdiction.

24 However, the government is required to prove that the
25 investigation that the defendant intended to impede, obstruct,

M5VVSHE3

Charge

1 or influence did, in fact, concern a matter within the
2 jurisdiction of an agency of the United States. I instruct you
3 as a matter of law that the United States Attorney's Office for
4 the Southern District of New York is an agency of the United
5 States, and that grand jury investigations conducted by that
6 office are matters within the jurisdiction of that office.

7 With respect to Count Three, the government has also
8 charged the defendant under two other theories of guilt:
9 Willful causation and aiding and abetting. This means that if
10 you find that the defendant did not directly commit the
11 offense, you must then consider whether he willfully caused or
12 aided and abetted the commission of the offense. However, if
13 you find that the defendant did directly commit the offense,
14 then you may convict on Count Three without considering these
15 other two theories of guilt.

16 If you all agree that the defendant is guilty of Count
17 Three under at least one of the three theories of guilt about
18 which I will instruct you, that is, as the person who directly
19 commit the offense under the willful causation theory, or as an
20 aider and abettor, then you may find the defendant guilty even
21 if you do not all agree on the particular theory of guilt.

22 I have already explained what it means to directly
23 commit the offense. Let me now explain the concepts of
24 willfully causing and aiding and abetting to you.

25 First, willful causation. It is the law that whoever

M5VVSHE3

Charge

1 willfully causes another person to do an act that would be a
2 crime if the defendant performed that act directly, is held
3 responsible for that crime as if he committed that crime
4 directly. This means that the defendant may be found guilty
5 even if he did not physically commit the crime or participate
6 in the actual criminal conduct. Thus, one who intentionally
7 causes another person to falsify a document, as I have defined
8 that crime, is guilty of falsifying a document if the
9 government proves that he acted knowingly and satisfied the
10 other elements of the crime, which I've already described to
11 you.

12 So if you find that the government proved beyond a
13 reasonable doubt that the defendant willfully caused another
14 person to falsify a document as I have defined that crime, you
15 must find the defendant guilty under the theory of willful
16 causation. This is so even if the individual that falsified
17 the document had no criminal intent.

18 Second, aiding and abetting. It is unlawful for a
19 person to aid, abet, counsel, command, induce, or procure
20 someone else to commit a criminal offense. A person who does
21 that is just as guilty of the offense as someone who actually
22 commits the offense. In order to convict the defendant as an
23 aider and abettor, the government must prove two elements
24 beyond a reasonable doubt:

25 First, the government must prove that a person other

M5VVSHE3

Charge

1 than the defendant committed the crime charged in Count Three;
2 and second, the government must prove that the defendant
3 willfully and knowingly associated himself in some way with the
4 crime, and that he willfully and knowingly engaged in some
5 affirmative conduct or some overt act for the specific purpose
6 of bringing about the crime.

7 The mere presence of the defendant in a place where a
8 crime is being committed, even with knowledge that a crime is
9 being committed, is not enough to make him an aider and
10 abettor. A defendant's acquiescence in criminal conduct by
11 others, even with guilty knowledge, is not enough to establish
12 aiding and abetting. An aider and abettor must know that a
13 crime is being committed and act in a way that is intended to
14 bring about the success of the criminal venture.

15 As to each charge, the government, in addition to
16 proving the essential elements of that charge, must also
17 establish that venue was proper in the Southern District of New
18 York, which includes all of Manhattan and the Bronx, as well as
19 Westchester, Rockland, Putnam, Dutchess, Orange, and Sullivan
20 Counties. Unlike the elements of the offenses which must be
21 proven beyond a reasonable doubt, the government is only
22 required to prove venue by a preponderance of the evidence. A
23 preponderance of the evidence means that it is more probable
24 than not that something occurred.

25 The government does not have to prove that a completed

M5VVSHE3

Charge

1 crime was committed within the Southern District of New York or
2 that the defendant was ever in the Southern District of New
3 York. It is sufficient to satisfy the venue requirement if any
4 act in furtherance of the crime occurred in this district. The
5 act itself may not be a criminal act. And the act need not
6 have been taken by the defendant, so long as the act was part
7 of the crime that you find the defendant committed.

8 With respect to Counts One and Two, you need to find
9 that it is more likely than not that an act in furtherance of
10 the charged conspiracies was committed or caused to be
11 committed in the Southern District of New York by the defendant
12 or a co-conspirator during the life of the conspiracy.

13 With respect to Count Three, there are two ways in
14 which you may find venue proper. First, you may find that it
15 is more likely than not that an act in furtherance of the
16 charged crime was committed or caused to be committed in the
17 Southern District of New York. Second, you may find that it is
18 more likely than not that the investigation that the defendant
19 intended to impede, obstruct, or influence was being conducted
20 in the Southern District of New York.

21 Proof of motive is not a necessary element of any of
22 the crimes with which the defendant is charged. Proof of
23 motive does not establish guilt nor does the lack of proof of
24 motive establish that the defendant is not guilty. If the
25 guilt of the defendant is proven beyond a reasonable doubt, it

M5VVSHE3

Charge

1 is immaterial what the defendant's motive for the crime or
2 crimes may be or whether the defendant's motive was shown at
3 all. The presence or absence of motive is, however, a
4 circumstance which you may consider as bearing on the intent of
5 the defendant.

6 It is unimportant whether a victim might have
7 discovered the fraudulent scheme charged in Count One had the
8 victim probed further. If you find that a scheme or artifice
9 to defraud or obtain money or property by means of materially
10 false or fraudulent pretenses, representations, or promises
11 existed, it is irrelevant whether you believe that a victim was
12 careless, gullible, or even negligent. Carelessness,
13 gullibility, or negligence on the part of the victim is no
14 defense to a charge of fraud.

15 You have heard evidence that We Build the Wall hired
16 lawyers. A lawyer's involvement with an individual or entity
17 does not itself constitute a defense to any of the charges in
18 this case. The defense has not claimed and cannot claim that
19 the defendant's conduct was lawful because he acted in good
20 faith on the advice of a lawyer.

21 If you conclude that other people may have been
22 involved in criminal acts charged in the indictment, you may
23 not draw any inference, favorable or unfavorable, toward either
24 the government or the defendant from the fact that those people
25 are not named as defendants in the indictment or are not

M5VVSHE3

Charge

1 present at this trial. You also may not speculate as to the
2 reasons why other people are not defendants in this trial.
3 Those matters are wholly outside your concern and have no
4 bearing on your function as jurors at this trial.

5 The defendant did not testify in this case. Under our
6 Constitution, a defendant has no obligation to testify or
7 present any evidence because it is the government's burden to
8 prove a defendant guilty beyond a reasonable doubt. That
9 burden remains with the government throughout the entire trial
10 and never shifts to a defendant. A defendant is never required
11 to prove that he is innocent. You may not attach any
12 significance to the fact that the defendant did not testify.
13 No adverse inference against him may be drawn by you because he
14 did not take the witness stand. You may not hold this against
15 him or consider it in any way in your deliberations in the jury
16 room.

17 You have heard the testimony of some witnesses who are
18 law enforcement officers or government employees. The fact
19 that a witness works in law enforcement or for the government
20 does not mean that that witness's testimony is, by virtue of
21 the witness's position, deserving of more or less consideration
22 or greater or lesser weight than that of any other witness.
23 The testimony of such a witness should not be regarded as more
24 or less truthful or accurate than that of any other witness
25 simply based on the witness's employment.

M5VVSHE3

Charge

1 You have heard the testimony of a witness who has
2 testified under a grant of immunity from this Court. What this
3 means is that the testimony of the witness may not be used
4 against him or her in any criminal case, except a prosecution
5 for perjury, giving a false statement, or otherwise failing to
6 comply with the immunity order of this Court. You are
7 instructed that the government is entitled to call as a witness
8 a person who has been granted immunity by order of this Court.

9 In addition, it does not follow that simply because a
10 person may have participated in criminal conduct, that the
11 person is incapable of giving truthful testimony. Such
12 testimony should be scrutinized with great care. You should
13 examine it closely to determine whether or not it is colored in
14 such a way as to place guilt upon the defendant in order to
15 further the witness's own interests. If you believe the
16 testimony to be true and determine to accept it, you may give
17 it such weight, if any, as you believe it deserves.

18 You have heard testimony from what we call an expert
19 witness. An expert witness is a witness who by education or
20 experience has acquired learning or experience in a specialized
21 area of knowledge. Such witnesses are permitted to express
22 their opinions as to relevant matters in which they have
23 special knowledge, skill, experience, and training. Expert
24 testimony is presented to you on the theory that someone who is
25 experienced in the field can assist you in understanding the

M5VVSHE3

Charge

1 evidence or in reaching an independent's decision on the facts.

2 Your role in judging credibility applies to experts as
3 well as other witnesses. In weighing this opinion testimony,
4 you may consider the witness's qualifications, his or her
5 opinions, the reasons for testifying, as well as all of the
6 other considerations that ordinarily apply when you are
7 deciding whether or not to believe a witness's testimony.

8 You may give the opinion testimony whatever weight, if
9 any, you find it deserves in light of the evidence in this
10 case. You should not, however, accept opinion testimony merely
11 because I allowed the witness to testify concerning his or her
12 opinion; nor should you substitute it for your own reason,
13 judgment, and common sense. The determination of the facts in
14 this case rests solely with you. As with the testimony of any
15 other witness, you may decide to accept all, some, or none of
16 the testimony of any expert witness.

17 There are several people whose names you have heard
18 during the course of the trial but who did not appear to
19 testify here. I instruct you that each party had an equal
20 opportunity or lack of opportunity to call any of these
21 witnesses. Therefore, you should not draw any inferences or
22 reach any conclusions as to what they would have said if they
23 had been called to testify.

24 Additionally, during the questioning of some
25 witnesses, the defense asked whether those witnesses reviewed

M5VVSHE3

Charge

1 certain devices or materials that are not in evidence. I
2 instruct you that each party had an equal opportunity or lack
3 of opportunity to review those devices and materials and offer
4 them into evidence. You should, however, remember my
5 instruction that the law does not impose on a defendant in a
6 criminal case the burden or duty of calling any witness or
7 producing any evidence. The burden remains with the government
8 to prove the defendant guilty beyond a reasonable doubt.

9 You have heard evidence during the trial that
10 witnesses have discussed the facts of the case and their
11 courtroom with the lawyers before the witnesses appeared in
12 court. Although you may consider that fact when you are
13 evaluating witnesses' credibility, understand that there is
14 nothing unusual or improper about a witness meeting with
15 lawyers before testifying so that the witness can be aware of
16 the subjects he or she will be questioned about, focus on those
17 subjects, and have the opportunity to review relevant exhibits
18 before being questioned about them. Such consultation helps
19 conserve your time and the Court's time. In fact, it would be
20 unusual for a lawyer to call a witness without such
21 consultation. Again, the weight you give to the fact or the
22 nature of the witness's preparation for his or her testimony
23 and what inferences you draw from such preparation are matters
24 completely within your discretion.

25 In this case you've heard evidence in the form of

M5VVSHE3

Charge

1 stipulations of testimony. A stipulation of testimony is an
2 agreement between the parties that, if called as a witness, the
3 person would have given certain testimony. You must accept as
4 true the fact that the witness would have given that testimony.
5 However, it is for you to determine the weight to be given that
6 testimony.

7 In this case you've heard evidence in the form of
8 stipulations of fact. A stipulation of fact is information
9 that the parties agree to present to the jury as evidence
10 without calling a witness to testify. The parties agree that
11 the facts contained in the stipulations are true. You must
12 accept those facts as true.

13 Some of the exhibits admitted into evidence include
14 redactions of certain information. "Redacted" means that part
15 of the document or photograph was taken out. There is nothing
16 unusual or improper about such redactions. You are to concern
17 yourself only with the part of the item that has been admitted
18 into evidence. You should not consider any possible reason why
19 the other part of it has been deleted.

20 You have heard testimony about evidence seized in
21 connection with certain searches conducted by law enforcement
22 officers. Evidence obtained from these searches was properly
23 admitted in this case and may be properly considered by you.
24 Such searches were entirely appropriate law enforcement
25 actions.

M5VVSHE3

Charge

1 Whether you approve or disapprove of how the evidence
2 was obtained should not enter into your deliberations because I
3 instruct you that the use of the evidence is entirely lawful.
4 You must, therefore, regardless of your personal opinions, give
5 this evidence full consideration, along with all the other
6 evidence in the case in determining whether the government has
7 proven the defendant's guilt beyond a reasonable doubt.

8 In cases involving allegations of fraud and money
9 laundering, like this one, courts often issue orders
10 restraining the use of or transfer of funds so that they may be
11 safeguarded for return to the victims of the crime, which can
12 only be done after the conclusion of a criminal case. Whether
13 or not such an order was issued by the Court in connection with
14 this case should have no bearing on your consideration of the
15 issues in this trial.

16 Your verdict must be based solely on the evidence
17 developed at trial or the lack of evidence. It would be
18 improper for you to consider, in reaching your decision as to
19 whether the government sustained its burden of proof, any
20 personal feelings you may have about the defendant's race,
21 religion, national origin, gender, age, sexual orientation,
22 disability or veteran status. Similarly, it would be improper
23 for you to consider any personal feelings you may have about
24 the race, religion, national origin, gender, age, sexual
25 orientation, disability or veteran status of any witness or

M5VVSHE3

Charge

1 anyone else involved in this case. A defendant is entitled to
2 a trial free from prejudice, and our judicial system cannot
3 work unless you reach a verdict through a fair and impartial
4 consideration of the evidence.

5 It would be equally improper for you to allow any
6 feelings you might have about the nature of the crimes charged
7 or the laws which apply to this case to interfere with your
8 decision-making process. To repeat, your verdict must be based
9 exclusively upon the evidence or lack of evidence in this case.

10 You will note that the indictment alleges that certain
11 acts occurred on or around various dates or that a certain
12 amount of money was involved. It does not matter if the
13 evidence you heard at trial indicates that a particular act
14 occurred on a different date or that the amount of money
15 involved was different. The law requires only a substantial
16 similarity between the dates alleged in the indictment and the
17 dates established by the evidence, or the amounts alleged in
18 the indictment and the amounts established by the evidence.

19 You have heard defense counsel refer to the fact that
20 certain investigative techniques were or were not used by law
21 enforcement authorities. There is no legal requirement that
22 law enforcement agents investigate crimes in a particular way
23 or that the government prove its case through any particular
24 means. Although you are to carefully consider the evidence
25 presented by the government, you need not speculate as to why

M5VVSHE3

Charge

1 they used the techniques they did or why they did not use other
2 techniques. The government is not on trial and law enforcement
3 techniques are not your concern. Your concern is to determine
4 whether or not, based on the evidence or lack of evidence, the
5 guilt of the defendant has been proven beyond a reasonable
6 doubt.

7 Video recordings have been admitted into evidence and
8 transcripts of the recordings were provided to use as aids. I
9 instruct you then and I remind you now that the transcripts are
10 not evidence. The transcripts were provided only as an aid to
11 you in watching the videos. It is for you to decide whether
12 the transcripts correctly present the conversations and
13 statements recorded in the videos that you watched. If you
14 wish to watch any of the videos again, they will be made
15 available to you during your deliberations.

16 Some of the exhibits that were admitted into evidence
17 were in the form of charts and summaries. I decided to admit
18 these charts, in addition to the underlying documents that they
19 represent, in order to save time and avoid unnecessary
20 inconvenience. You should consider these charts and summaries
21 as you would any other evidence.

22 There have also been charts and exhibits introduced
23 merely as summaries or analyses of testimony and documents in
24 the case. They are not, however, evidence themselves. They
25 are graphic representations or other ways of summarizing more

M5VVSHE3

Charge

1 voluminous information that was either described in the
2 testimony of a witness or reflected in documents admitted into
3 evidence. It is often easier and more convenient to utilize
4 charts and summaries as opposed to placing all of the
5 underlying documents in front of you. But it is up to you to
6 decide whether the summary exhibits fairly and correctly
7 reflect the underlying testimony and documents they purport to
8 summarize.

9 To the extent that the summary exhibits conform to
10 your understanding of the underlying evidence, you may accept
11 them. To the extent that they do not, you should disregard
12 them and rely on the underlying evidence instead. But one way
13 or the other, please understand that the summary exhibits are
14 not in and of themselves direct evidence; they are merely
15 intended to serve as aids in the parties' presentation of the
16 evidence.

17 (Continued on next page)
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Charge

1 THE COURT: Before you retire to deliberate, there are
2 a few more areas I need to instruct you on.

3 Your job is to decide whether the evidence establishes
4 the guilt of the defendant with respect to the crimes charged
5 in the indictment beyond a reasonable doubt.

6 Deliberations must take place in the jury room with
7 all jurors present. If any juror leaves the room, say for a
8 bathroom break, all deliberations must stop and may resume only
9 when every juror is present.

10 In order to return a verdict, each juror must agree to
11 such verdict. You have the duty as jurors to consult with one
12 another and to deliberate with a view to reaching an agreement,
13 if it can be done without giving up individual judgment.

14 As jurors, each one of you must decide the case for
15 yourself, but only after an impartial consideration of the
16 evidence with your fellow jurors.

17 No juror should give up any honestly held conviction
18 as to the weight or effect of the evidence solely because of
19 the opinion of your fellow jurors or for the mere purpose of
20 returning a verdict.

21 During the course of your deliberations, you as
22 individuals should not hesitate to reexamine your own views and
23 change your opinion if convinced it is erroneous.

24 For those of you who took notes during the trial.
25 Remember any notes you took are to be used only to refresh your

M5v3she4

Charge

1 memory during deliberations. They may not be used as authority
2 to persuade your fellow jurors as to what a witness did or did
3 not say. Your notes are not superior to your or your fellow
4 jurors' independent recollection. Those of you who did not
5 take notes should not be influenced by the fact that another
6 juror has taken notes. Rather, you should rely on your own
7 independent recollection of the evidence.

8 If there is any question as to what the testimony was,
9 or what my instructions to you were, you should ask to have
10 that portion of the testimony or the instructions read back to
11 you.

12 Your notes and the notes of your fellow jurors are not
13 a substitute for the official record or for the governing
14 principles of law I have set forth. The court transcript
15 prevails over a juror's notes.

16 You will have in the jury room copies of the exhibits
17 introduced into evidence should you wish to consult them.

18 If, during the course of your deliberations, your
19 recollection of any part of the testimony should fail, or if
20 you should find yourself in doubt concerning my instructions to
21 you on the law, you have the option to return to the courtroom
22 for the purpose of having such testimony or instructions read
23 back to you. Your foreperson, Juror No. 1, should write out
24 your request and give it to the court security officer who will
25 deliver the note to me. As soon as the attorneys, the

M5v3she4

Charge

1 defendant, and court staff are assembled in the courtroom,
2 you'll be called back to the courtroom and I will promptly
3 respond to your request. During any readback of testimony,
4 keep in mind how the witness's demeanor appeared to you as you
5 observed the witness testify.

6 I want you to keep in mind that I cannot hand over to
7 you a written transcript of testimony. If you want to hear
8 testimony again, you must come back to the courtroom, everyone
9 must be assembled, and our extremely competent court reporters
10 will read back the testimony.

11 In any event, do not tell me or anyone else how the
12 jury stands on the issue of whether or not the defendant is
13 guilty until after a unanimous verdict is reached.

14 In order to reach a verdict, all 12 members of the
15 jury must agree. Your verdict on each count must be unanimous.
16 Whenever all your members are in agreement, you must report
17 your verdict to the Court. When you have reached a verdict,
18 simply tell the court security officer that you have a verdict,
19 but not what the verdict is, and you will be promptly called
20 back to the courtroom to announce your verdict.

21 Because the trial jury is about to retire to
22 deliberate, I now charge and I emphasize that there must be no
23 further communication or contact between the trial jury and the
24 alternate jurors. The alternates will be provided a separate
25 area to await the rendition of the trial jury's verdict. The

M5v3she4

Charge

1 alternates are not to discuss this case with anyone, including
2 yourselves. Nor are you to read anything about the case, nor
3 you are to permit anyone to discuss the case with you, nor are
4 you to form any opinion as to the factual issues in this case,
5 nor are you to form or express any opinion as to the guilt or
6 innocence of the defendant unless and until such time as you
7 may be requested to participate in the trial jury's
8 deliberations.

9 During your deliberations, lunch will be provided.
10 You should not leave the jury room during deliberations unless
11 you are instructed to do so.

12 Are there any smokers on the jury?

13 If you are a smoker, as I will not be in the jury room
14 with you, should you desire a smoking break, you must make that
15 request to your jury foreperson. Should the foreperson declare
16 a break, the court security officer must be notified. During
17 this break, all deliberations must cease. As smoking is not
18 permitted inside the building, the smokers will be escorted by
19 the court security officer outside the building to smoke.
20 During the recess, the smokers outside the building cannot
21 discuss the case, and the non-smokers in the jury deliberation
22 room may not discuss the case. You may not resume your
23 deliberations until all of you are back in the jury room. Do
24 you all understand?

25 Counsel, please approach.

M5v3she4

Charge

1 (At the sidebar)

2 THE COURT: I want to make sure my interns can hear.
3 The indictment is going to go into the jury room. Are there
4 any requests for redactions or is it going in as is?

5 MR. SOBELMAN: The operative indictment is not a
6 speaking indictment, so we have no issue with it going back
7 unredacted. But, I am not sure if defense counsel has a
8 different view.

9 MR. ROOS: This only charges this particular defendant
10 so it is not that situation.

11 MR. SOBELMAN: Sorry. I should have clarified that as
12 well.

13 THE COURT: I was speaking of the superseding
14 indictment.

15 MR. SOBELMAN: It is the S2 indictment.

16 THE COURT: Are there any exceptions to the charge?

17 MS. MOE: None from the government.

18 MR. MERINGOLO: None from the defense.

19 THE COURT: Thank you.

20 (In open court)

21 THE COURT: Now I am about to submit this case to you
22 for your final determination.

23 As I have previously stated, the law and your oath
24 require that you render a fair and impartial verdict without
25 fear, favor, or sympathy.

M5v3she4

Deliberations

1 Now take this case and in the fulfillment of your oath
2 and in accordance with the instructions of the Court, render a
3 true and impartial verdict.

4 You may escort the jury to the jury room.

5 (Jury begins deliberations. Time noted 4:14 p.m.)

6 THE COURT: Please swear in the marshal.

7 You may be seated.

8 (Court security officer sworn)

9 THE COURT: Do I have your permission to send in the
10 paper exhibits?

11 MS. MOE: Your Honor, we have no objection to sending
12 back the assembled government exhibits. I don't believe we've
13 had an opportunity to take a look at the assembled defense
14 exhibits, but we can do that very quickly.

15 On the subject of paperwork with respect to the
16 indictment, we just wanted to print out a separate copy that
17 didn't have the ECF header which has some additional
18 information, in particular about the date of the return of the
19 superseding indictment, which, given the nature of the trial
20 evidence, might be confusing to jurors.

21 THE COURT: I do have a version that does not have any
22 ECF information on it. It does have on the last page the
23 handwritten date, the word superseding indictment, and then the
24 signature of Judge Aaron.

25 MS. MOE: Perhaps we could just remove the backing of

M5v3she4

Deliberations

1 the indictment to avoid juror confusion, given the evidence
2 about the defendant's arrest in August of 2020, just to avoid
3 any confusion about what a superseding indictment might be.

4 THE COURT: Is there any objection to that?

5 MR. MERINGOLO: No objection.

6 MS. MOE: Thank you, your Honor. We can just take a
7 moment to confer with the defense on the exhibits. Otherwise,
8 no issues regarding paperwork from the government.

9 THE COURT: Also with respect to video evidence. Do
10 you have a device that they can use in the jury room?

11 LAW CLERK: We already have it, your Honor.

12 THE COURT: Yes? Okay. All right then. Why don't
13 you go ahead and confer and once you have decided, I'll have
14 those documents brought into the jury room.

15 Is there anything -- we have all of the cell numbers?

16 LAW CLERK: Yes, we do.

17 THE COURT: Is there anything else you wanted to say?

18 MS. MOE: Your Honor, nothing with respect to
19 paperwork going back to the jury. We did have a question about
20 timing.

21 Does the Court have a view about the schedule for
22 today or tomorrow for the jurors' deliberations? We were
23 wondering whether it is the Court's practice to bring jurors
24 back or to let them leave on their own, and if so, when that
25 might be.

M5v3she4

Deliberations

1 THE COURT: I would bring them back in at five minutes
2 to 5. And I'd have them come in tomorrow morning at 9 and let
3 them begin their deliberations when everyone is here. You're
4 not required to be here at that time. Just to be available.

5 MS. MOE: Thank you, your Honor. Aside from that, no
6 other issues from the government.

7 With respect to paperwork, if we can take a brief
8 break we'll confer with defense on defense exhibits.

9 THE COURT: Anything from you, Mr. Meringolo?

10 MR. MERINGOLO: No, Judge.

11 THE COURT: All right then. I will see you then at
12 five minutes of 5.

13 (Recess pending verdict)

14 (Continued on next page)

M5VVSHE5

(Jury present)

THE COURT: Do the parties agree that the jurors are all present and properly seated?

MR. ROOS: Yes, your Honor.

THE COURT: Please be seated.

We've come to the end of our day. You are to continue your deliberations tomorrow morning at 9 o'clock. You can come directly to the jury deliberation room. However, you cannot continue deliberating until tomorrow when you're all gathered together. So stop deliberating now.

Don't discuss the case. Don't permit anyone to discuss the case with you. And when you return in the morning, you may commence your deliberations once everyone is present and Juror No. 1 says that you are commencing your deliberations. Have a good evening.

(Jury not present)

THE COURT: Please be seated.

Is there anything before we break?

MS. MOE: Not from the government, your Honor.

Thank you.

MR. MERINGOLO: Nothing, Judge.

THE COURT: All right then. See you tomorrow.

Thank you. Have a good evening.

(Adjourned to June 1, 2022, at 9 o'clock a.m.)